

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

4 Adv. Case No. 22-01139-mg

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6 In the Matter of:

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8 CELSIUS NETWORK, LLC,

9

10 Debtor.

11 - - - - - x

12 CELSIUS NETWORK LIMITED, et al.,

13 Plaintiff,

14 v.

15 STONE, et al.,

16 Defendants.

17 - - - - - x

18 United States Bankruptcy Court

19 One Bowling Green

20 New York, NY 10004

21

22 January 12, 2023

23 8:58 AM

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1 B E F O R E :

2 HON MARTIN GLENN

3 U.S. BANKRUPTCY JUDGE

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5 ECRO: KAREN

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1 HEARING re Adversary Proceeding: 22-01139-mg Celsius Network
2 Limited et al v. Stone et al Hybrid Evidentiary Hearing RE:
3 Motion of Plaintiffs for Preliminary Injunction Pursuant to
4 Rule 7065 of the Federal Rules of Bankruptcy Procedure. (Doc
5 # 20 to 25, 27 to 29, 32 to 34, 42 to 45, 51 to 53, 57, 58)
6 Hybrid Evidentiary Hearing Scheduled for 1/11/22 at 9 AM &
7 1/12/22 at 9 AM.

8
9 HEARING re Hearing Using Zoom for Government RE: Motion of
10 Plaintiffs for Preliminary Injunction Pursuant to Rule 7065
11 of the Federal Rules of Bankruptcy Procedure (Doc# 1353 to
12 1358, 1361) Going Forward on 01/11/2023 at 9:00 am and
13 01/12/2023 at 9:00 am

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25 Transcribed by: Sonya Ledanski Hyde

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1 P R O C E E D I N G S

2 BAILIFF: All set.

3 THE COURT: Thank you.

4 CLERK: All right. Go ahead and pause.

5 THE COURT: All right, let me ask you, is everyone
6 ready to proceed (indiscernible)?

7 MR. HURLEY: Yes, Your Honor, for plaintiffs.

8 MR. FREEDMAN: Yes, Your Honor, for defendants.

9 THE COURT: All right. Okay. We had a long day
10 yes -- let me start by saying I appreciated everybody's
11 efforts yesterday. It was a long day, and I'm glad we
12 finished the evidence yesterday. Let me just repeat a
13 little of what I said yesterday, because we have a number of
14 people, creditors or others, who were appearing by Zoom
15 again today if you were here yesterday during the
16 evidentiary phase.

17 I'll only recognize the lawyers who were counsel
18 of record in this case during the hearing today. Everyone
19 else should remain mute. If anyone interferes with the
20 proceeding, they will be cut off. I think everything from
21 my standpoint went smoothly yesterday.

22 So, let's proceed. Mr. Hurley, do you want to
23 begin?

24 CLERK: Judge, I think we need everyone to make
25 appearances at the (indiscernible).

1 THE COURT: We do. You're right, Jen. Thank you.
2 Go ahead. Let me get the appearances of counsel first for
3 the plaintiff.

4 MR. HURLEY: Mitch Hurley with Akin Gump Strauss
5 Hauer & Feld on behalf of the plaintiffs, and with me at
6 counsel table are Dean Chapman and Lizzy Scott.

7 THE COURT: Okay. Mr. Roche?

8 MR. FREEDMAN: Good morning, Your Honor. Vel
9 Freedman and with me is co-counsel Kyle Roche
10 (indiscernible) --

11 THE COURT: All right.

12 MR. FREEDMAN: -- for defendants.

13 THE COURT: Thank you very much. Okay. Go ahead,
14 Mr. Hurley.

15 MR. HURLEY: Thank you, Your Honor. Again for the
16 record it's Mitch Hurley with Akin Gump Strauss Hauer & Feld
17 for the plaintiffs. Your Honor, Celsius submits that the
18 status quo injunction it seeks should be granted. Celsius
19 again is asking only for an injunction that will preserve
20 assets that the defendants admit they took out of Celsius'
21 wallets and transferred to their own temporarily for the
22 period of time that it takes to resolve this action so that
23 those assets are available to satisfy a judgment in the
24 event one is entered.

25 THE COURT: Let me ask you this question, Mr.

1 Hurley, and I hope you'll talk more about this during your
2 closing. When you say the assets they took from Celsius'
3 wallets, are you talking about those assets that were
4 removed from Celsius' wallets after Mr. Stone resigned from
5 this (indiscernible)?

6 MR. HURLEY: No, Your Honor. I'm talking about
7 the -- all of the transactions that were unauthorized that
8 they engaged in in Celsius' wallets, which we submit are --
9 include substantial numbers of transactions that long
10 predate the March 9th resignation.

11 And I will talk about this more, Your Honor, but
12 what the defendants have to do respectfully is establish
13 some evidence for their affirmative defense, which is that
14 those transfers were actually authorized, and there is no
15 evidence for that at all, certainly not the contracts. I
16 mean, that's why they have to come up with this story about
17 Alex Mashinsky --

18 THE COURT: Oh, you can't -- it's a question for
19 the Court to evaluate the evidence, but you say no evidence,
20 but the evidence is Mr. Stone's testimony, disputed yes, but
21 Mr. Stone's testimony that Mr. Mashinsky authorized him to
22 take an advance on his profit share. You may not agree with
23 the -- with his testimony. You certainly challenged it in
24 cross-examination, but do you agree that that is the
25 evidence that the defendants are relying on for the

1 withdrawals from the Celsius wallet before Mr. Stone
2 resigned?

3 MR. HURLEY: We are, and I think that's a great
4 question and great point, because as far as I know, they're
5 relying on that evidence for both the pre-March 9th
6 transfers and the post-March 9th transfers.

7 They continue to say that the property they took
8 after he resigned, the property that he took after March
9 26th and our demand letter, was still authorized, okay?
10 That is an incredible assertion, and what does it tell you
11 about the credibility --

12 THE COURT: Okay, you can -- I'll give you a
13 chance to argue about it being incredible. That's why I
14 want to separate out -- let -- okay, let's deal first with
15 respect to the withdrawals that were made while Mr. Stone
16 was still with Celsius KeyFi.

17 You're -- do you agree that the only evidence they
18 offered yesterday to support those withdrawal -- I guess
19 it's two things. One would be alleged oral authorization
20 from Mr. Mashinsky, that they were relying on that early,
21 right?

22 MR. HURLEY: Correct.

23 RON CUCCHIARO: All right. They also pointed to
24 provisions in the agreement that gave them authority to pay
25 expenses, I think up to \$50,000, without further authority.

1 Am I correct in that?

2 MR. HURLEY: They did point to that provision,
3 Your Honor. They did not identify in the spreadsheet, the
4 sworn statement they provided, which of the transactions
5 they believed fall into that category. So, I think some
6 more work is going to be required to understand what they
7 claim was authorized by that part of the agreement as
8 opposed to what was authorized by Mashinsky. But so far
9 they haven't -- they actually haven't specific -- sorry, go
10 ahead.

11 THE COURT: No, I -- do you agree that they --
12 that Stone did have authority to pay expenses up to \$50,000
13 without further authority -- without further authorization
14 from Celsius, at least during the time before he resigned?

15 MR. HURLEY: Well, it wouldn't be the whole time
16 before he resigned, right? Because that agreement only came
17 into place on January 11th. So, if there -- if that
18 authority existed, it was for a very limited period of time.

19 Again, the specific transactions they claim fall
20 into this category haven't been identified for us to study,
21 and I think some more work is going to have to be done to
22 understand exactly what claim they're making in that regard.

23 THE COURT: The evidence -- the evidence is
24 closed. So, the issue is any of the spreadsheets that were
25 introduced. I don't know whether anybody has tried to look

1 to see how many -- you know, what expenses were less than
2 50,000 -- fell within the time period that the agreement
3 gave them authority to pay expenses without further
4 authorization up to \$50,000.

5 No one -- certainly no one yesterday specifically
6 pointed to it, but there are spreadsheets that are in
7 evidence and I don't -- I didn't try and separate out last
8 night which items were less than \$50,000, et cetera.

9 MR. HURLEY: I mean, there are spreadsheets in
10 evidence, Your Honor, but I guess I would remind the Court
11 that Mr. Stone put in a sworn affidavit describing what
12 those spreadsheets provide, and what he said was merely
13 those are transfers in Celsius wallets to the defendant's
14 wallets, and he did not take the further step of trying to
15 identify, hey, here's some that don't fall in the category
16 that should be subject to this injunction.

17 THE COURT: Well, I don't remember the dates that
18 they -- but there were some things -- there were some
19 entries in a column. It was somewhat ambiguous, perhaps,
20 but that, you know, rent.

21 MR. HURLEY: Right. He would have some things
22 that indicated spent on expenses and then when we dug
23 further, we found out that the expense was the repayment of
24 a personal loan for Jason Stone or it was his rent, right,
25 and the original spreadsheet didn't even tell us the rent

1 part.

2 THE COURT: Let me ask you. Did -- have you
3 broken down the totals of what was with -- what you say was
4 drawn -- withdrawn without authorization pre-resignation and
5 post-resignation? Because I am -- I'm very -- look, and you
6 can -- I'm open -- I'm playing devil's advocate to some
7 extent on this.

8 They've made at least a colorable showing that
9 there was an agreement between the parties that provided for
10 profit share for Stone. I heard a lot of evidence and
11 argument yesterday about, well, they've never really put in
12 evidence of what the prophets were. Celsius now disputes
13 that there were any profits, but that's what typically is
14 involved, you know, in an accounting.

15 And certainly their state court lawsuit, you know,
16 I heard evidence yesterday that they demanded an accounting.
17 Celsius never responded, and you know, that strikes me
18 (indiscernible) you know, that seems like the garden variety
19 breach of contract accounting issue between Stone and
20 Celsius that would -- you know, in my mind would cover
21 perhaps the -- would cover the period before he resigned.

22 But before you -- let me -- let me finish my
23 thought. The one thing, and certainly I don't know whether
24 Mr. Freedman or Mr. Roche is the one who's going to make the
25 closing argument here, but I sure don't see any self -- what

1 I would describe as a self-help provisions in any agreement
2 that say, well, I think I got a claim against Celsius, I'll
3 just take the money.

4 You know, there's nothing in there. There may be
5 a contract dispute as we think we're entitled to profits --
6 the profit share of X. They know. But there's nothing in
7 there other than the alleged authorization from Mashinsky to
8 take an advance on it. There's a credibility issue on that.

9 If I were to conclude there was no authorization,
10 they used self-help -- they basically took the money, and
11 I'm trying to understand how much did they take before the
12 resignation, how much did they take after the resignation.
13 Let me stop there.

14 Go ahead, Mr. Hurley.

15 MR. HURLEY: We can certainly get that information
16 to you. I don't have the exact amount at my fingertips
17 right now. But if I could respond to a couple of the points
18 that you asked about, sir?

19 Okay. So, maybe I'll start with where you left
20 off which is the question of self-help. Okay? And you're
21 100 percent right. You have a services agreement that was
22 entered into on January 11, 2021 that contemplates the
23 possibility of profits, right? That doesn't mean a profit
24 share will be paid.

25 Of course, first you have to generate profits and

1 there's a dispute about whether profits were generated, and
2 I'll come back to that in my -- later in my presentation.
3 But more importantly, Your Honor, and I think you're hitting
4 the nail right on the head, even if they could show, and we
5 submit they can't and didn't, but even if they could show
6 that they had actually earned profits, that doesn't mean
7 they get to exercise self-help.

8 I mean, think about the CFO of a corporation who
9 has an employment agreement that calls for them to get a
10 million dollar bonus if they meet certain targets at the end
11 of the year. That doesn't mean the CFO gets to go at the
12 end of the year and use their signing authority over the
13 corporate bank account to take a million dollars out of the
14 account and pay themselves, and that's effectively what they
15 did here, right?

16 And they know that the contract doesn't authorize
17 them to do that. How do we know that they know that?
18 Because they come to you with this story about Alex
19 Mashinsky having orally authorized it. If the contracts
20 authorize it, they wouldn't need the Mashinsky story. But
21 of course the contract doesn't authorize that. Contracts
22 don't work that way and this contract doesn't work that way.
23 Specifically, it provides that if there are profits, they
24 will be paid by Celsius Network to Celsius KeyFi and
25 distributed from there, and that's the way it works.

1 Okay, so that's on the profit share. I think it's
2 also important when you're talking about these transfers to
3 think about the time frames we're talking about. So, any
4 transfer before January 11, 2021 for instance, Your Honor,
5 would have been during the period of time that the October
6 7th service agreement was in place, and we went through the
7 compensation provisions in that agreement, which was between
8 Celsius and KeyFi, Inc., and they said specifically there
9 are going to be some cash payments for the services and
10 those are the only compensation that KeyFi is entitled to
11 for services provided during that period of time.

12 And you heard Mr. Stone testify yesterday Celsius
13 made those payments. So, during that period of time
14 payments have been made, and that agreement and the service
15 agreement both are integrated. They both have clauses that
16 say there's no oral modifications.

17 So, yeah, we submit that the agreements certainly
18 don't allow for it, and you know, the evidence of an oral
19 modification we think is weak, and even if it was there, it
20 would be contrary to those agreements. With respect to --

21 THE COURT: Well, I don't (indiscernible) matter
22 of corporate governance given the amounts that were
23 involved. Does one person, even the CEO, have the authority
24 to authorize -- I don't know whether it would have required
25 board approval or -- you know, in most --

1 MR. HURLEY: I -- that's --

2 THE COURT: -- cases, the CEO can't just decide
3 I'm going to pay millions of dollars to somebody, another
4 executive.

5 MR. HURLEY: Also true.

6 Regarding the accounting, I mean, there's a couple
7 of points on this, Your Honor. First of all, how is Celsius
8 going to do an accounting of the defendant's activities? I
9 mean, you heard the testimony from Mr. Holert and Mr. Nolan
10 and others that we couldn't follow what the defendants were
11 doing in part because he never delivered the software, the
12 wormhole, that he described was going to be necessary for
13 Celsius to understand the P&L, and he never delivered it to
14 us. So, it wouldn't be possible for us to do that.

15 THE COURT: Well, but I -- there's a contract that
16 said profit share. It doesn't say who calculates it, how
17 it's calculated, who's got the burden. Am I right about
18 that?

19 MR. HURLEY: It's I think actually --
20 respectfully, I think it's a little different than that.
21 So, what they're pointing you to, Your Honor, is the asset
22 purchase agreement. The terms related to the services and
23 compensation were supplanted by the services agreement, and
24 the services agreement provides specifically that's -- that
25 the company that Mr. Stone was the CEO of would be

1 responsible for maintaining the P&L, which of course makes
2 sense because it's his activities.

3 THE COURT: Where -- point me to the specific --
4 can somebody --

5 MR. HURLEY: Sure.

6 THE COURT: Get one of your team to point to the
7 specific paragraph you rely on.

8 MR. HURLEY: Yeah, it's in Schedule A of the
9 services agreement.

10 THE COURT: I got all the exhibits here, so just -
11 -

12 MR. HURLEY: This is (indiscernible).

13 Yeah. So, it's Schedule A and it is --

14 THE COURT: Which exhibit are we talking about,
15 20?

16 MR. HURLEY: Oh, sorry.

17 THE COURT: (Indiscernible).

18 MR. HURLEY: What exhibit?

19 MAN 1: Forty-one.

20 MR. HURLEY: It's Exhibit 41.

21 THE COURT: Forty-one. Okay.

22 MR. HURLEY: Mm-hmm. And Schedule A appears on PX
23 41-6. Okay?

24 THE COURT: You're going by the Bates number or
25 no?

1 MR. HURLEY: Well, it's PX -- the exhibit number.

2 THE COURT: What page? I'm sorry?

3 MR. HURLEY: It's PX-41 -- if you look at the
4 bottom right corner, there's an exhibit paging. So, PX-41,
5 Page 6.

6 THE COURT: Yes, okay. All right.

7 MR. HURLEY: And if you look at the third bullet
8 point, so again in this agreement, Celsius is defined as
9 Celsius Network and KeyFi is defined as Celsius KeyFi, the
10 company Mr. Stone was the CEO of.

11 THE COURT: Yes.

12 MR. HURLEY: And the third bullet point, Celsius
13 KeyFi shall retain control of its internal budget and profit
14 and loss determination in good faith. And again, of course
15 that --

16 THE COURT: (Indiscernible).

17 MR. HURLEY: What's that?

18 THE COURT: They never did it.

19 MR. HURLEY: Correct. And of course it makes
20 sense that it would be the obligation of Mr. Stone, since it
21 was Mr. Stone who was putting on the risks and engaging in
22 the investment activities to engage in that process.

23 You know, the APA provision with respect to the
24 audit, I actually think in their papers the defendants say
25 that the first time they requested an audit was in September

1 after Mr. Roche's firm came along, and that obviously would
2 be long past the deadline to request such an audit.

3 But again, the services agreement supplants the
4 APA in terms of -- yeah okay.

5 Any other questions, Your Honor, before I go back
6 to my presentation or anything else?

7 THE COURT: Well, you know, I tend to interrupt a
8 lot, Mr. Hurley, but go ahead.

9 MR. HURLEY: Please. I appreciate it so I know
10 what you're interested in.

11 Okay, so I'm going to go through the factors for a
12 preliminary injunction. I'm going to try and do it briefly.
13 I know your --

14 THE COURT: I know the facts for preliminary --
15 you can do it if you want.

16 MR. HURLEY: Okay.

17 THE COURT: Go ahead. Please.

18 MR. HURLEY: I'll be efficient, I promise.

19 THE COURT: It's okay. Go ahead.

20 MR. HURLEY: Okay. So, starting with the merits.
21 All Celsius needed to show on its motion is that there are
22 serious questions going to the merits of Celsius' claims to
23 make them fair grounds for litigation. That's the Dom case,
24 and Celsius didn't need to make that showing with respect to
25 all of its claim. Just one will do. That's 725 Eatery.

1 The facts adduced in the proceeding we submit
2 support all of Celsius' claims and a much higher standard
3 than one we're required to meet including for turnover,
4 conversion, unjust enrichment, (indiscernible) accounting.

5 Celsius has demonstrated and the defendants admit
6 that they have taken and have refused to return millions of
7 coins and other digital assets worth millions of dollars,
8 and their only defense is that -- depends on convincing Your
9 Honor that Mr. Mashinsky gave oral authorization for those
10 transfers, and as Your Honor pointed out that he was even
11 authorized to give oral authorization to make those
12 transfers. And in support of that, the only evidence
13 they've offered, again as Your Honor pointed out, is the
14 self-serving and unsupported assertion of Mr. Stone himself.

15 You heard Mashinsky emphatically deny that claim.
16 Stone claims that Patrick Holert and Connor Nolan were
17 witnesses to Mashinsky's authorization. You saw Mr. Holert
18 and Mr. Nolan testify under oath yesterday and they offered
19 zero support for that assertion.

20 Mr. Stone hasn't pointed to a scrap of written
21 evidence that supports the claim, which is an extraordinary
22 claim, that a CEO orally authorized him to take \$20 million
23 off of the Celsius platform.

24 THE COURT: Let me just -- I -- let me come back
25 to what I asked before, and I know you said -- well, just so

1 we'll be clear, can you tell me how much you contend was
2 improperly withdrawn from Celsius' wallet before Stone
3 resigned and how much after?

4 MR. HURLEY: I mean, I can get you that, Your
5 Honor. I --

6 THE COURT: I know, but just -- and can you even
7 give me an estimate of what the before and after was? I am
8 -- look, I'm going to --

9 MR. HURLEY: Yes.

10 THE COURT: -- just so we're clear for the record,
11 yes, I am going to want a submission on how much was
12 withdrawn before and how much after with record citations
13 for that, okay? But do you have a -- I don't want to be
14 unfair --

15 MR. HURLEY: I do, actually.

16 THE COURT: You don't, you don't.

17 MR. HURLEY: I do, Your Honor.

18 THE COURT: Go ahead.

19 MR. HURLEY: I actually do. I actually do. Hold
20 on a second. I have it in here, I think. Yeah, okay. So,
21 I'm not finding it right now, but it was with respect to the
22 ERC 20 token spreadsheet, the amount that was after --

23 THE COURT: That had so many tabs on it. You
24 know, you went through ERC 20. You went through Ethereum --

25 MR. HURLEY: Yes. Let me -- let me try and -- let

1 me try and make it a little easier. So, there are really
2 three categories in the defendant's spreadsheet of
3 transfers. There was one of them transferring ETH from
4 Celsius' wallets to defendant's wallets and then doing
5 whatever they did with it with the ETH, okay?

6 THE COURT: Sure, and I remember, you know, some
7 of the columns were -- some of the rows were in yellow or --

8 MR. HURLEY: Right.

9 THE COURT: And we were looking for net figures,
10 but go ahead. Okay.

11 MR. HURLEY: And then the second category was they
12 transferred so-called ERC 20 tokens out of the wallet which
13 are things like USDC and Di, and then the third category is
14 their purchases of NFTs directly into the Celsius wallet.
15 Do you understand that distinction?

16 THE COURT: I do.

17 MR. HURLEY: Okay.

18 THE COURT: I know. I have to be careful about
19 saying what I understand and not but I think --

20 MR. HURLEY: Same here. And so, I know with the
21 ERC 20 transfers that -- post March 9th the value of those
22 transfers. I think deducting the yellow highlighted
23 transactions was \$5.25 million, and my recollection for the
24 ETH transfers post March 9th, and again it's obviously
25 important to have -- to have this understood in coin terms,

1 I think, but from the post March 9th period I want to say it
2 was maybe 300 change ETH, which was worth something like a
3 half a million dollars at the time of the transactions. And
4 I -- and I think the post March 9th ETH spend on NFTs
5 purchased into the wallet was in that same sort of range.

6 But I guess I want to come back to a point on
7 credibility, Your Honor, which is that, you know, if the
8 plaintiffs are willing to sit here and argue having -- you
9 looked at the March 26th demand letter and then admitting
10 they resigned on March 9th and claim that all those
11 transactions they made after March 9th are still authorized
12 in the face of that evidence, what does it say about the
13 credibility of their claim that any of these transactions
14 were authorized?

15 THE COURT: You humor me about this, okay, for a
16 minute. So, it sounds like you're -- rough numbers, you're
17 talking approximately about \$6 million of post March 9th
18 transfers you say were unauthorized, round number.

19 MR. HURLEY: Of post March 9th transfers we say
20 are unauthorized, correct.

21 THE COURT: Okay.

22 MR. HURLEY: I mean, we'd want to confirm that
23 because I'm going from memory from yesterday.

24 THE COURT: I know, and I'm going to -- and I want
25 you to confirm. During the discovery --

1 MR. HURLEY: Can --

2 THE COURT: No, wait, let me get my question out.

3 MR. HURLEY: Okay.

4 THE COURT: During the discovery, how much have
5 you identified remains in the possession of the defendants?
6 Look, I mean, here's why I'm saying it. You know, if you're
7 able to show that they have \$3 million in value that they're
8 still holding directly or indirectly, and your allegation is
9 they transferred 6 million post March 9th unauthorized, it
10 gets a lot easier for you to convince me that all of the
11 transfers he made before he resigned were unauthorized. I
12 may not even have to reach that issue at this stage of the
13 case. Do you understand what I'm getting at?

14 MR. HURLEY: I do understand what you're saying,
15 Your Honor, but I think I want to push back a little bit on
16 it because --

17 THE COURT: (Indiscernible) go ahead.

18 MR. HURLEY: -- because where we are now, I have
19 to remind you, we're still just relying on information that
20 we've gotten from the defendants themselves about these
21 transfers, and it's incomplete information. I don't know if
22 Your Honor had a chance to look through the spreadsheet at
23 all. Probably not. There wasn't much to between yesterday
24 and today, but if you do, you'll see that there is this very
25 substantial amount of information about, like, the fate of

1 the -- of the property that was taken and the proceeds of
2 that property that's not included in the spreadsheet.

3 So, it's really hard to be confident now that we
4 even have all of the relevant transfers identified, and then
5 we're still at a phase because it's, you know, expedited
6 discovery, we haven't had that much time, where we kind of
7 have to rely on the defendants to say what they still have,
8 and that makes me pretty uncomfortable under the
9 circumstances.

10 THE COURT: What is it that you're asking me to --
11 what is it that you're asking me to freeze? What do you
12 know --

13 MR. HURLEY: So --

14 THE COURT: What do you know as of -- I
15 understand, discovery is early, all that. What do you know
16 that they have that you believe should be frozen?

17 MR. HURLEY: So, let me ask -- answer the first
18 question first, because it's a little bit different than the
19 answer to the second. The first -- answer to the first
20 question is we're asking for an injunction that is
21 categorical, precisely because we think their work remains
22 to be done to make sure that the parties have identified the
23 property that comes within the category, and the categories
24 that we're seeking or the category that we're seeking to
25 have enjoined is as described in our proposed order. It is

1 all of the Stone utilized assets and the proceeds of those
2 assets, which means the assets that we contend were taken
3 without authority from the Celsius wallets and whatever
4 property was obtained with those assets.

5 And I know it is an injunction that is
6 categorical, but I don't know that there is a way other than
7 entering a categorical injunction to avoid a situation
8 where, you know, the defendants haven't identified
9 everything that they took and all the proceeds of that and
10 they kind of wind up being able to, if you will, ride off
11 into the sunset with those proceeds just because of this --

12 THE COURT: So, the law as I understand it,
13 because I've had this issue come up before, is it has to be
14 (indiscernible) unambiguous from the four corners of the
15 injunction, what it is -- please don't do that. When I'm
16 talking --

17 MR. HURLEY: I apologize, Your Honor.

18 THE COURT: -- don't (indiscernible) conversation.
19 Okay?

20 MR. HURLEY: I'm sorry. I was -- I was asking for
21 an authority that goes to this point.

22 THE COURT: It has to be clear from the four
23 corners of the injunction what the defendants are prohibited
24 from doing, okay? And that's what troubles me a little bit
25 about your so-called categorical injunction, because then

1 you get into a dispute, well, yes, we were, no, we weren't.
2 It has to be -- in order to be enforceable, an injunction,
3 you enforce it by contempt if they violate it, and you know,
4 the standards for contempt, the order has to be clear and
5 unambiguous. The evidence of noncompliance has to be clear
6 as well.

7 And so, I'm concerned. I understand that you say
8 discovery is at an early stage. We haven't identified
9 everything. But if I grant you the relief that you're
10 asking for, I need -- I need to know exactly what the
11 defendants are prohibited from doing. They have to know
12 precisely what they're prohibited from doing.

13 MR. HURLEY: Mm-hmm.

14 THE COURT: You know, it may well be that further
15 -- if you get the relief you're asking for and further
16 discovery shows -- you know, because you want to be able to
17 trace what -- if you say \$10 million in improper transfers
18 and we've now seen that the defendants have dissipated
19 another 5 million of that 10 million, okay, and you think
20 you're able to trace the -- those assets into whoever's
21 hands they are now, that's a problem. That's an issue for
22 you, okay?

23 So, you know, I hope you're understanding what my
24 discomfort -- if -- I haven't decided to grant you the
25 relief yet, but I want to know if I grant you the relief,

1 precisely what it is they're prohibited from doing. And it
2 may be that you'll take more discovery and you'll find that,
3 you know, the number instead of 10 million is 15 million or
4 they'll say no, 5 million or whatever. Go ahead.

5 MR. HURLEY: I do understand the exact issue
6 you're describing, Your Honor, and I've actually thought
7 about it a lot, especially in the last, you know, few days,
8 and my concern is really that if we -- if we identify the
9 scope of the injunction based on the property that's
10 identified in the spreadsheet, then again, we're really
11 confining the injunction in a way that's been defined by the
12 defendants before we've really had adequate time to ensure
13 that it's complete and comprehensive.

14 And my concern is that while we may discover in
15 the future that there are additional assets taken off the
16 platform, if that happens two months from now, they could
17 have transferred it if the injunction doesn't cover
18 categorically that property in the meantime.

19 And so, what we are proposing is that there is a
20 categorical injunction, and we did find -- and I apologize
21 for not paying attention fully before. I was asking my team
22 for the citation to one of the cases we found last night
23 that provided that in fact it is proper under some
24 circumstances to enter a categorical injunction with work
25 remaining to be done to fill out the precise sort of scope

1 and contours of what property the injunction covers. And
2 that's what we're proposing to do here.

3 And know it's a -- you know, it's maybe not a
4 perfect solution, but I think if we don't do it that way,
5 there's just an enormous risk that property that hasn't been
6 identified is going to be dissipated forever, and we're
7 never going to be able to get it back within the
8 jurisdiction of the Court. So, that's the response, Your
9 Honor, and I think I can't -- here we go. In the --

10 THE COURT: You know, (indiscernible) one of the -
11 - look, I -- whether you ever -- you and your team looked at
12 it or not earlier in the Celsius case, you know, I posted
13 the English Wealth Commission Report. It's like 500 pages
14 long. This has been a problem identified all around the
15 world. It's the problem with crypto assets, and tracing it
16 can become nearly impossible at some point.

17 And certainly, you know, I think that's -- that
18 was the issue with the software that the treasury has
19 banned, you know, or prohibited its use because stuff just -
20 - you can't track the stuff, but it is what it is. So, I
21 will be interested in what authority you have for this more
22 categorical injunction you're looking for.

23 MR. HURLEY: I can give you a cite now. So, this
24 is FTC v. IAB Marketing, LP, and it's 2013 W.L. 12038955.

25 THE COURT: What court?

1 MR. HURLEY: Southern District of Florida, and
2 there are two cases related to freezing crypto assets that
3 we cite as well. There are papers, but I can give them to
4 you if you'd be interested.

5 One of them is Jacobo v. Doe, which is Eastern
6 District of California, and it's 2022 W.L. 2052637.

7 THE COURT: Give me the Westlaw cite again, 2022
8 WL --

9 MR. HURLEY: 2052637, and then the other crypto
10 case is Astrove v. Doe, 2002 W.L. 2 -- sorry, 8805345, and
11 that's Southern District of Florida as well. What? Oh,
12 it's -- I'm sorry, Your Honor.

13 MAN 1: 2022 W.L. 280 --

14 THE COURT: Hold on. I --

15 MR. HURLEY: Okay.

16 THE COURT: Give it to me.

17 MR. HURLEY: That one wasn't my fault. So, the
18 Astrove Cite, Your Honor, is 2022 --

19 THE COURT: Yeah.

20 MR. HURLEY: -- W.L. 28 --

21 MAN 1: 280 --

22 MR. HURLEY: 53 --

23 MAN 1: -- 5345.

24 THE COURT: All right. You can't -- one -- I --

25 MR. HURLEY: Sorry, Your Honor. Okay. I'll do

1 it.

2 THE COURT: With two voices speaking, I don't have
3 a clear record. Give it to me again. 2022 WL --

4 MR. HURLEY: Yeah, 2805345, and that's Southern
5 District of Florida.

6 THE COURT: Okay.

7 MR. HURLEY: I mean, I suppose one possibility,
8 Your Honor, and again, I don't want to assume how this is
9 going to go, but if an order was to be entered could be a --
10 potentially a settle order where the parties try to
11 negotiate and under -- like something to present to Your
12 Honor that would cover -- try to cover these problems,
13 because I -- we obviously have thought about them, too, and
14 I think there's something serious that needs to be
15 confronted, so.

16 THE COURT: Look, the last thing -- look, I
17 haven't made up my mind about this, so the defendant's
18 counsel shouldn't be -- you know, they'll make all their
19 arguments and I -- the last thing you want to find out is
20 that I've entered an order that you can't enforce.

21 MR. HURLEY: Yeah, that is part of what we've been
22 thinking about as well, Your Honor, certainly. And we just
23 -- I think just have to balance it with the concern that the
24 order is not broad enough to capture everything that's been
25 taken, and it's a -- it's a problem for sure that needs to

1 be confronted, so.

2 THE COURT: All right. Go ahead with your
3 argument.

4 MR. HURLEY: Okay. So, coming back to the
5 authorization affirmative defense that Stone has asserted, I
6 pointed out that Mr. Stone's only evidence is his own
7 testimony. He hasn't come forward with any written
8 evidence. He testified that he had between 4 and 10
9 communications with Mashinsky in which Mashinsky authorized
10 him to take property as an advance on profit share. He said
11 that one or two of those communications were by e-mail, but
12 when we asked him to identify those e-mails, he couldn't do
13 it.

14 At his deposition, he actually complained that it
15 was because he didn't have access to all of his Celsius e-
16 mails, but we found out yesterday that Mr. Stone actually
17 downloaded his Celsius e-mail inbox and took it with him
18 before he left.

19 Now, he says there was some gap. Did we lose you,
20 Your Honor?

21 BAILIFF: (Indiscernible) rejoin.

22 MR. HURLEY: Are you -- we can't hear you.

23 THE COURT: Yeah, can you hear me now?

24 MR. HURLEY: Yes.

25 THE COURT: Okay.

1 MR. HURLEY: Yes.

2 THE COURT: I'm sure it was at my end, but
3 everything completely froze up, disconnected. I'm
4 reconnected now. We sort of -- the last thing I heard was
5 the discussion about the possibility if I grant the relief
6 to require you to try and settle an order with the other
7 side, and I apologize, but that's where --

8 MR. HURLEY: Oh, okay. Okay, so I had just
9 resumed my argument.

10 THE COURT: I know that.

11 MR. HURLEY: But if you have any more questions
12 about that --

13 THE COURT: I -- well, I didn't hear it.

14 MR. HURLEY: Okay. All right, so I'll --

15 THE COURT: It was brilliant, but -- I'm sure it
16 was brilliant, but I just didn't hear it.

17 MR. HURLEY: Okay. So, I will come back to that.
18 So, I was -- I was starting to talk about the authorization
19 claim. And as you pointed out, the only evidence offered is
20 Mr. Stone's own testimony that Alex Mashinsky authorized him
21 to take the property.

22 He hasn't come up -- forward with any written
23 evidence of any kind. He testified that he had between 4
24 and 10 communications with Mashinsky in which Mashinsky
25 supposedly authorized him to take property as an advance on

1 profit share. He testified that one or two of those
2 communications were by e-mail, but when we asked him to
3 identify those e-mails, he couldn't do it.

4 At his deposition, he actually complained he
5 couldn't produce either of those alleged e-mails because
6 supposedly he didn't have access to all of his e-mails in
7 discovery in this case. What we found out yesterday --

8 THE COURT: Let me ask you -- let me ask you this.
9 Did the defendants serve a document request on Celsius that
10 required it to search its e-mail to see whether any such
11 existed in Celsius' system?

12 MR. HURLEY: They did serve a document request,
13 and during the course of expedited discovery, they asked us
14 to turn over the entirety of Jason Stone's e-mails like as
15 one group, and we said, well, we're not going to do that.
16 But if you have search terms you want us to run, give us the
17 search terms. Even on a non-expedited basis, turning over
18 an entire collection of e-mails isn't how discovery is
19 conducted, but -- so, but I think the important point, Your
20 Honor, here --

21 THE COURT: Did they give you search terms to
22 search?

23 MR. HURLEY: They have since, but I think it's for
24 the plenary discovery rather than the expedited discovery,
25 although I have to admit, I'm not the expert on exactly

1 where we are on that. But anyway, I think the important
2 point here, Your Honor, is -- let me back up. In terms of
3 the expedited discovery, we had a conversation early on
4 about what they wanted and they asked us to search for e-
5 mails for Connor Nolan, and we took their search terms and
6 we had some negotiations, and we agreed on what they would
7 be and then we started the production.

8 And then after that, they came to us with this
9 request, give us all of Jason Stone's e-mails and we said
10 that's not practical on an expedited basis and it wouldn't
11 really be called for even in a plenary basis, though if you
12 give us the search terms, of course we'll run the search
13 terms against Jason's e-mails just like everybody else's.
14 And my understanding is that is underway and probably some
15 of it has been produced.

16 But I think it's important to remember this, Your
17 Honor, that we found out yesterday that Mr. Stone actually
18 downloaded his Celsius e-mail inbox before he left and took
19 it with him.

20 THE COURT: I know this. I know that --

21 MR. HURLEY: Yeah, and he said he searched those
22 e-mails, can't come forward with anything. He also
23 testified that he believed some of these writings might have
24 been in text messages or WhatsApp communications, and he
25 acknowledged that those messages, the texts and the

1 WhatsApp, they would be on his own phone, right? Because
2 those are - those are applications on your personal phone.
3 And he admitted, yeah, I still have all those text messages
4 and WhatsApps.

5 We asked him if he'd look for it. He did. He
6 didn't come forward with anything. He testified Holert and
7 Nolan may have been copied on some of those communications.
8 He heard them say we don't have a recollection of that.

9 He certainly was on notice that this exact point
10 was going to be a central issue on the motion. Our
11 expedited discovery, all we asked for in our letter was send
12 us anything that supports this claim that's in writing.
13 That was on November 29th, two months ago. They've had two
14 months to try and find that communication. He's got his e-
15 mails from Celsius. He's got all his WhatsApp and text
16 messages. Nothing.

17 So, you know, under the circumstances I think we
18 can submit -- we submit that the Court can infer that the e-
19 mail and text message just doesn't exist. I mean, consider
20 if such a document existed, doesn't it stand to reason that
21 he would have kept a copy? We're talking about a document
22 that he's saying authorized him to take property which
23 ultimately amounted at least to over \$10 million. Wouldn't
24 he have e-mailed it to himself, printed out a copy and put
25 it in a desk drawer?

1 We're talking about a person that downloaded every
2 single one of his e-mails in his inbox before he left and
3 took it with him. That story doesn't add up, we submit.
4 The truth is, we submit, he didn't find any evidence of that
5 authorization because he wasn't authorized to take the
6 property.

7 And the actual documentary record in this case,
8 Your Honor, points in the exact opposite direction of what
9 Mr. Stone claims. As we've been talking about this morning,
10 first, many of the transfers occurred long after Celsius
11 demanded the return of its coins and after he quit.

12 We went through some of the numbers before.
13 Here's the part of my outline that has some of the numbers,
14 Your Honor, you asked for before I couldn't find. I'm going
15 to give you them.

16 He listed 71 ETH transfers between September 9th,
17 2020 and September 13, 2022, and 27 of those supposedly
18 authorized transfers he as compensation for services
19 rendered were after he quit his job. Twenty-five of those
20 transfers were after Celsius sent the March 26, 2021 letter
21 and board resolutions instructing him to return all digital
22 assets and return the (indiscernible) and private keys.

23 His (indiscernible) token spreadsheet tells a
24 similar story. After he resigned from Celsius on March 9th,
25 he asked Celsius -- he transferred ERC tokens 17 times.

1 Here's the number. The post March 9th tokens were worth
2 more than \$5.25 million.

3 Eleven of those transfers were after the March
4 26th letter. And of the NFTs he purchased into Celsius
5 wallets and later transferred to himself, he used Celsius
6 coins to buy 88 of those NFTs after he resigned from
7 Celsius. Fifty-three of those purchases were after --

8 THE COURT: Remind -- I may be confusing two
9 points, but I thought he testified that he shared some of
10 those transfer to him with the co-founder.

11 MR. HURLEY: So, I believe -- well, let's see.
12 Some of those transfers -- a number of those transfers on
13 the spreadsheet do appear to have ultimately been paid to
14 some of the folks that he associated with. I think Your
15 Honor probably is remembering the specific story about the
16 1.4 million DAI which he took from the Celsius wallet in
17 September of 2021 and then converted into ETH and sent to
18 Tornado Cash.

19 And what he said is that he withdrew -- because
20 the way Tornado Cash works is you send Tornado Cash and then
21 you have effectively a code that allows you to withdraw the
22 Tornado Cash. Nobody knows where it's going to go, okay?

23 So, he transferred the cash -- transferred it to
24 Tornado Cash and then he testified he withdrew half of it,
25 and I think I understood his testimony to be that his co-

1 founders withdrew the other half. Okay?

2 And then with respect to --

3 THE COURT: (Indiscernible).

4 MR. HURLEY: No, he said he didn't know -- he
5 knows he spent it, but he doesn't know -- he can't be
6 specific about what he spent the six or \$700,000 on.

7 THE COURT: Are you going to bring a fraudulent
8 conveyance action against his co-founder?

9 MR. HURLEY: We are very much considering that,
10 Your Honor, at least and maybe other claims. I think there
11 would be other claims that would be warranted by those --
12 that set of facts.

13 Okay. And then, so the NFTs he purchased, I
14 already gave you that. So, collectively just based on the
15 spreadsheet, and again this is the defendants that we're
16 relying on to give us this information and there may be much
17 more, just on the spreadsheet, the property that was taken
18 was more than \$11 million in U.S. dollar value at the times
19 of the transfers so very substantial.

20 And a majority of that property, a majority, he
21 took after he quit his job. And again, at the risk of
22 testing your patience, Your Honor, I'm going to make this
23 point again.

24 If he's willing to argue that after he quit his
25 job he was still authorized to take property, what does that

1 say about the credibility of his claim that he was ever
2 authorized to take property in the face of the absence of
3 any written evidence to support it or any evidence other
4 than his say-so, when his say-so is telling you right now
5 that despite you having looked at the March 26th letter and
6 his March 9th resignation letter, he was entitled to and he
7 was authorized to keep paying himself millions of dollars of
8 Celsius property.

9 Okay, come back to the agreements quickly, and
10 I'll do this very quickly because we already talked about
11 them. Talked about the October 7th agreement which was the
12 service agreement between KeyFi and Celsius that was in
13 place until January 11th. You heard him admit that the
14 amounts -- the only amounts due during that period of time
15 were paid. It was cash payment.

16 Let's see. I think I covered this. Okay, so I
17 talked about why it is that we think that even if he could
18 show that he had created a profit, it wouldn't allow -- it
19 wouldn't entitle him to seize Celsius assets to pay himself
20 profit share.

21 I do want to make sure, though, that I -- and I'm
22 -- I suspect Your Honor picked up on the way in which Mr.
23 Stone is trying to tell you he made a profit. He does it by
24 taking credit for market appreciation of Celsius coins.

25 THE COURT: Yeah. Let me -- let me stop you

1 there.

2 MR. HURLEY: Okay.

3 THE COURT: And I -- is there -- and I think
4 through your witnesses you tried to show that under the
5 agreements if, for example, Ether or Bitcoin increased in
6 value 20 percent, that that would not be part of a profit
7 calculation. He had to show that the number of coins had
8 actually increased. Did I have that correct?

9 MR. HURLEY: Yeah, that's exactly right, Your
10 Honor, and of course --

11 THE COURT: Where in the agreements does it
12 essentially say that?

13 MR. HURLEY: There's a calculate -- there's a
14 whole schedule that provides how profit is calculated and --

15 THE COURT: Point me to where -- point me to where
16 that is.

17 MR. HURLEY: Okay. Let's see. Okay.

18 THE COURT: I consider this to be -- Mr. Hurley, I
19 consider this to be an important point that --

20 MR. HURLEY: Okay.

21 THE COURT: -- he -- I take it though he also --
22 if Bitcoin or Ether had declined 20 percent in value, what
23 would be the effect on a profit calculation of that?

24 MR. HURLEY: He absolutely still could have earned
25 a profit for himself notwithstanding the decline in the

1 dollar value ETH.

2 THE COURT: So --

3 MR. HURLEY: The way that it works --

4 THE COURT: -- the profit calculation was not --
5 did not hinge on the prevailing price of particular coins?

6 MR. HURLEY: No. And Your Honor, I mean, honestly
7 it's sort of just common sense, right? Like if we give him
8 100 ETH and he just holds it for a year --

9 THE COURT: Right, but I don't usually cite just
10 the common sense.

11 MR. HURLEY: Fair enough.

12 THE COURT: I like to see where you're pointing to
13 in the agreement.

14 MR. HURLEY: Fair enough. So, the -- right, so
15 the way the agreement worked was, to answer your question,
16 if he was holding ETH and he put it into yield farming, for
17 example, or he put it into an automated market maker, and
18 the price of ETH went down but his activities nevertheless
19 in the automated market-making platform resulted in fee
20 revenue, for instance -- I mean, that's what he was supposed
21 to be doing is taking the coins and earning more coins,
22 whether governance tokens or other kinds of revenue based on
23 his investment activities, right? That's what he was trying
24 -- that's what he was hired to create is revenue from
25 investment activities, not just holding coins while they

1 appreciate.

2 THE COURT: That was said yesterday. But I don't
3 remember somebody actually pointing to the language in an
4 agreement, but I -- that is what you just said.

5 MR. HURLEY: So, it is Exhibit B. It's a very
6 complex like series of provisions in Exhibit B to the
7 agreement. And --

8 THE COURT: Wait a minute. Which agreement?

9 MR. HURLEY: Sorry, the services agreement.

10 THE COURT: Okay.

11 MR. HURLEY: It is, sorry, Schedule B. Services
12 agreement key terms. And I guess because they are pretty
13 complex, Your Honor, if you think this is a particularly
14 important point, I would actually ask for some briefing on
15 it, because it's there. It is not easy to digest in -- on
16 first glance I would say. It was written by people that --

17 THE COURT: Okay, so the service agreement is
18 Exhibit 41. I have it open in front of me.

19 MR. HURLEY: Yeah.

20 THE COURT: Where am I -- I do want -- see,
21 because this is important. Where am I looking at this
22 complex explanation?

23 MR. HURLEY: Sure. So, it basically begins at
24 seven, weekly and monthly performance calculation for
25 activities, and there are formulas that define, you know,

1 revenue for activity and coins, costs for --

2 THE COURT: Hang on. I want to be sure --

3 MR. HURLEY: Sure.

4 THE COURT: You're referring to Exhibit 41.

5 MR. HURLEY: I believe so.

6 THE COURT: Which Bates page? Give me the Bates
7 page. (Indiscernible).

8 MR. HURLEY: Bates -- yeah. Bates Page PX 41-7.

9 THE COURT: Okay, in which definition -- which
10 section?

11 MR. HURLEY: Oh, sorry. Actually, you should go
12 to dash 9, and it's Section 7.

13 THE COURT: Okay, weekly and monthly performance
14 calculations for activities.

15 MR. HURLEY: Correct, yeah. And there's
16 definitions of revenue for activity and coins, cost for
17 activity and coins, gross profit for activity and coins,
18 gross profits for activities in U.S. dollars, which the
19 understanding was that when -- if a profit was generated in
20 coins, it would be converted into U.S. dollars strictly for
21 payment to the defendants.

22 THE COURT: Which of the subsections in Section 7
23 are you referring to as explaining how to -- you don't look
24 in the rise or fall in the value of the particular coin but
25 whether they've generated additional coins.

1 MR. HURLEY: You really have to look at the
2 provision kind of holistically, Your Honor, and I confess I
3 have not -- I didn't come here today prepared to go through
4 sort of point by point by point, and it is a complex
5 agreement.

6 And if -- again, if Your Honor is -- this is an
7 important issue for the motion, we would be very happy to
8 submit briefing on it. I mean, our position again from the
9 beginning has been that even if he could show that there's
10 profits, he doesn't get to seize the money. So, you know,
11 hold onto the money and then we can argue later about what
12 this contract means.

13 THE COURT: No, that was the point about --
14 there's nothing in any of the agreements that I've seen that
15 supports self-help.

16 MR. HURLEY: Right, exactly. So, we were more
17 focused on those issues, but again if there's -- if you'd
18 like us to do that, we would be happy to provide that
19 information.

20 THE COURT: We'll -- I'll try and come up with
21 what I want to see after we finish -- when we're finishing
22 today. Go ahead.

23 MR. HURLEY: Okay. Okay. All right. I'm now at
24 the self-help portion of my outline. I think we've covered
25 that. Okay. The claim that Mr. Stone is making we submit

1 also makes no sense by its own terms.

2 I mean, they're claiming that Mashinsky authorized
3 them to take a percentage as an advance on profit share
4 between late October and late February or early March 2021.
5 That's when the authorization supposedly happened, but they
6 admit that no one ever prepared a P&L at any time. They
7 admit that Celsius was relying on the defendants to create
8 this wormhole program so that Celsius could even understand
9 what the nature of the activities were to track them and to
10 understand the performance of those activities.

11 You look like you have a question, Your Honor?

12 THE COURT: Well, I'm just -- you know, the part
13 of your argument that I have some problem with, if the
14 relationship hadn't fallen apart and Celsius hadn't
15 collapsed, does that mean that Celsius would never have --
16 you know, there would never be any profit share unless what
17 happens? I mean, I don't think -- I don't think Stone
18 signed up for a deal that would say ha, ha, ha, you don't
19 get any profit share until you can put together a P&L to our
20 satisfaction, you know, that shows you had a profit.

21 MR. HURLEY: But Your Honor, the services
22 agreement that Mr. Stone actually signed on behalf of
23 Celsius KeyFi as its DEO provides that Celsius KeyFi is
24 responsible for the P&L. Like, so he would get paid
25 provided he could prove he made profits.

1 THE COURT: Okay.

2 MR. HURLEY: And that's the way the agreement was
3 organized. So --

4 THE COURT: So, you're saying the burden was on
5 him to produce a P&L that would pass a laugh test and show a
6 profit?

7 MR. HURLEY: Absolutely. I mean, as you heard
8 from the testimony, Celsius had no way of doing it itself,
9 and you don't have to depend on Celsius. Mr. Stone admitted
10 that he understood that if he didn't deliver that wormhole,
11 Celsius was never going to be able to prepare a P&L on its
12 own. That's why the responsibility was on Mr. Stone.

13 THE COURT: Whoa, whoa, whoa. You just said that
14 he was responsible for preparing the P&L, not Celsius.

15 MR. HURLEY: No, I'm just -- right. Precisely,
16 but he testified that it would not have been possible for --
17 because he has been suggesting the contrary, and he admitted
18 it wouldn't have been possible for Celsius to prepare a P&L
19 without the wormhole. I mean --

20 THE COURT: Well, let me just -- just so we're
21 clear on that. Your position is that under the service
22 agreement, Celsius KeyFi was responsible for preparing the
23 P&L.

24 MR. HURLEY: Correct. Correct. And from Celsius'
25 perspective the wormhole --

1 THE COURT: Hold on. And they never did that.

2 MR. HURLEY: Sure.

3 THE COURT: Celsius KeyFi --

4 MR. HURLEY: Correct.

5 THE COURT: -- never --

6 MR. HURLEY: Correct, that's admitted.

7 THE COURT: I have no evidence in the record that
8 Celsius KeyFi, of which Stone was the chairman, ever
9 prepared a P&L, correct?

10 MR. HURLEY: Exactly. That's correct.

11 THE COURT: All right.

12 MR. HURLEY: Okay. Let me turn to irreparable
13 harm, and I'll wrap up. So, I cited this case at the
14 outset, Dom v. Miller. There are many others. Where a non-
15 movant's assets may be dissipated before final relief can be
16 granted or where the non-movant threatens to remove its
17 assets from the Court's jurisdiction, irreparable harm
18 exists.

19 Celsius has shown that the defendants can and will
20 dissipate and secrete assets absent an injunction. They
21 transferred hundreds -- they made hundreds of transfers of
22 millions of coins. That's on the record. They used Tornado
23 Cash to conceal the destination on many, many occasions.
24 That's on the record, and past examples of asset secretion
25 or strong evidence that it will be repeated if it's not

1 enjoined. The speed and anonymity of crypto transactions
2 makes it particularly easy, absent an injunction, for assets
3 to be removed from the Court's reach. That's the Heisenberg
4 case, 2021 W.L. 8154531, also Southern District of Florida.

5 But we don't have to guess here, Your Honor.
6 Plaintiffs have said they're going to dissipate assets
7 absent an injunction including legal fees.

8 THE COURT: What about -- I -- maybe I
9 misunderstood. I was a little surprised to hear that
10 yesterday or the day before he transferred another \$100,000
11 to a law firm.

12 MR. HURLEY: I was quite surprised too, Your
13 Honor.

14 THE COURT: I'm sorry?

15 MR. HURLEY: I was quite surprised to hear that,
16 too, Your Honor. Did you have a question or --

17 THE COURT: So -- yeah, I -- and maybe I
18 misunderstood. I thought that the stipulation and order
19 that had been entered would have prevented that, but --
20 either that or -- did it? Did it prevent what they did?

21 MR. HURLEY: We did not. There was not an
22 agreement to cease transfers in the interim, so.

23 THE COURT: Okay.

24 MR. HURLEY: While it was not contrary to this --
25 to the order that was entered by Your Honor, we certainly

1 would argue and likely will argue in the future that it was
2 a stay violation.

3 THE COURT: Okay, go ahead.

4 MR. HURLEY: So, as you just mentioned, you heard
5 testimony yesterday that literally the day before a hearing
6 on a preliminary injunction motion, Mr. Stone sent \$100,000
7 to his lawyers, presumably knowing that if he waited one
8 more day, there was at least a possibility that Your Honor
9 would have imposed an injunction that would have prevented
10 it.

11 They even argue that their need supposedly to use
12 more Celsius assets to pay their lawyers is a reason to deny
13 the injunction. I want to note, Your Honor, in that section
14 of their brief where they make this argument, they don't
15 cite a single case in support of that assertion, and that is
16 because the law provides just the opposite.

17 Where funds are traceable to alleged wrongdoing as
18 here, it doesn't matter whether those funds are the only
19 source that the non-movant has to pay their legal fees. I'm
20 going to cite Your Honor to In re: Marketxt, 376 B.R. 390,
21 that's Bankruptcy S.D.N.Y. 2007.

22 That principle is certainly true in civil cases
23 like here. It's even true in criminal cases, Your Honor.
24 For example, in the Monsanto case, the United States Supreme
25 Court upheld an order freezing a criminal defendant's assets

1 based on cause to believe that the assets were illicitly
2 obtained, even though those assets were the only way the
3 criminal defendant had to pay his lawyers.

4 In civil actions, where the funds subject to
5 restraint are the proceeds of transactions challenged in the
6 case, Courts will enjoy the funds even if necessary to pay
7 legal fees, and I have two more cites. SEC V. Quinn, 997
8 F.2d 287 (7th Circuit 1993), SEC v. Bremont, 954 F. Supp
9 726, and that's S.D.N.Y 1997.

10 Defendants already have dissipated enormous funds.
11 We talked a moment ago about the 6 or \$700,000 that Mr.
12 Stone took out of Tornado Cash at the end of 2021, and he
13 has no idea what happened to it other than he spent it.

14 Their sworn statement identifying the property,
15 and I touched on this before, Your Honor, is missing
16 information on the whereabouts of vast amounts of property
17 that was taken from Celsius and what happened to it.

18 If you look at that spreadsheet, you'll see
19 they'll say like, you know, took 350 ETH. You know, either
20 it was used to buy NFTs or it was sent to Tornado Cash, you
21 know, or a series of options, and they don't say which one
22 it is.

23 And Celsius suspects it's going to need further
24 relief from this Court and swiftly in the event it gets an
25 order to bring defendants in compliance with that December

1 16th order to make sure that we have all of the property
2 identified in the way that it should be and to ensure that
3 as much of that property can be brought in the Court's
4 jurisdiction and preserved for the benefit of creditors.

5 But it also appears with at least some
6 transactions they have made transfers in a way, at least
7 according to them, that they are never going to be traced.
8 And if an injunction isn't entered, Your Honor, the risk
9 that they're going to do that again is overwhelming, and
10 that's part of why we're so focused on making sure the
11 injunction is sufficiently broad.

12 This is exactly the type of harm that the case law
13 says justifies the type of status quo freezing injunction
14 that we're seeking. They argue that this is a case where
15 money damages are sufficient. They cite Jackson Dairy from
16 1979.

17 THE COURT: Forget the money damages are
18 sufficient.

19 MR. HURLEY: Okay.

20 THE COURT: Money damages are not sufficient.

21 MR. HURLEY: Okay, balance of the harms, Your
22 Honor. Again, case after case that provides where the
23 movant faces the risk of not being able to satisfy a
24 judgment at the end of the case if the injunction isn't
25 entered, but the non-movant is merely restricted temporarily

1 from making further transfers of the property at issue, the
2 balance weighs in favor of the movement. We submit that is
3 clearly the case here. We cite In re: Calpine and the
4 Jacobo case that I cited to Your Honor before stand for that
5 proposition.

6 So, in conclusion, Your Honor, we submit that the
7 elements for entering preliminary junction have been met and
8 that, again, we submit and respectfully there's no question
9 Your Honor has the discretion to enter the injunction, and
10 we urge you to do so because for all the reasons that we've
11 described, including related to issues with cryptocurrency
12 and how quickly it can be transferred out of the reach of
13 the Court and the past conduct of the defendants, which has
14 been established, that the injunction is entered so that as
15 much property as possible can be preserved.

16 We know he's already squandered some. Let's face
17 it. Some of that property is never coming back for the
18 benefit of creditors, but to the extent he still has
19 property and the proceeds of it, it should be enjoined now
20 so he can't squander any more and at least that part that he
21 hasn't taken and spent on who knows what will be -- will
22 remain to satisfy creditors.

23 And in the absence of an injunction, we submit
24 they're just going to be further emboldened in this case and
25 we think that not productive for the balance.

1 At the end of the day, they took Celsius property
2 or at least we've made a very strong case, Your Honor,
3 certainly a strong enough case that it was an unauthorized
4 taking of property to satisfy the standard requirement for
5 getting a preliminary injunction, and we submit they should
6 be required to maintain the status quo through the balance
7 of the case. Thank you, Your Honor.

8 THE COURT: Thank you, Mr. Hurley.

9 MR. FREEDMAN: Your Honor, would it be all right
10 if we took just a five-minute comfort break before I
11 started?

12 THE COURT: Let's take a 10-minute break. We'll
13 resume at 10:15.

14 MR. FREEDMAN: Thank you, Your Honor.

15 (Recess)

16 THE COURT: All right. Mr. FREEDMAN, are you
17 making the argument for the defendants?

18 MR. FREEDMAN: I am, Your Honor, except I just ask
19 if it would be possible for I believe her name is Deanna to
20 make Mr. Stone a co-host so he can share some exhibits that
21 have been entered into evidence?

22 THE COURT: Sure.

23 CLERK: He's a co-host.

24 MR. FREEDMAN: Thank you. Are you ready, Your
25 Honor?

1 THE COURT: Yes, I am.

2 MR. FREEDMAN: Good morning, Your Honor. Vel
3 Freedman, Freedman Normand Friedland firm representing the
4 defendants.

5 Judge, there's a couple things that I want to --
6 before I launch into the actual argument that I prepared
7 that I want to address from the back and forth between you
8 and Mr. Hurley, which is -- and I think Mr. Hurley said this
9 numerous times, and so I just want to correct the record on
10 this.

11 The defendants concede that there are some
12 transfers that were made at a time that were made without
13 the authorization of Celsius. We understand that, and while
14 the Court is correct that there isn't a provision for self-
15 help in the contracts, that just happens to be what the
16 situation was.

17 You have a situation where Mr. Stone had left
18 Celsius. Celsius was refusing to do an audit. He was owed
19 a significant amount of money. Some of these assets, and I
20 want to -- this is a very important point, which is when
21 that time occurred, but some of those assets were taken
22 without authorization.

23 Now, I want to say we believe he's entitled to
24 those assets and we believe there's a proper set-off defense
25 and I'll get to that in a moment, and I think it's important

1 to recognize, Your Honor, that at this moment in time you're
2 not deciding the merits of this case --

3 THE COURT: Mr. Freedman, set-off defense is
4 relevant to a breach a contract action. It's not taking --
5 it's not relevant to if you'll excuse me stealing assets,
6 okay? There's no -- there is no self-help set-off,
7 particularly now that Celsius is in bankruptcy, but -- and I
8 want to make that in the clearest terms.

9 You know, this is not a breach of contract action.
10 He made unauthorized transfers. You dispute how much of
11 those were unauthorized. He doesn't get to make
12 unauthorized transfers and then argue that he's got a, you
13 know, somehow self-help should be permissible here because
14 he'd have a set-off claim.

15 You know, in the bankruptcy case he may have, you
16 know, claims for unsecured -- unsecured claims, but don't
17 tell me that he could exercise -- could take whatever he
18 wanted to take without authorization. The issue is what was
19 unauthorized. Go ahead.

20 MR. FREEDMAN: So, let me address that, Judge.
21 You heard from Mr. Hurley four or five times today about
22 this resignation letter, which is PX 42, and that was the
23 date by which Mr. Hurley said authorization ends.

24 I'd like to -- I'd like to pull up PX 42 because,
25 Judge, we don't believe that that is the time when

1 authorization ended. So, Your Honor, if you want to turn to
2 PX 42, but I've -- we've tried to excerpt the relevant
3 portions of it, and that is this is not a resignation letter
4 which says Mr. Mashinsky, I'm resigning from my position as
5 CEO of Celsius KeyFi effective immediately.

6 In fact, what he talks about is transitioning out
7 of the role of CEO of Celsius KeyFi, and if you look at the
8 bottom paragraph, he says my hope is that one month from now
9 we will have worked out a strong and lasting structure.

10 And Your Honor, this is very important, because if
11 you go to PX 37 -- Mr. Stone, can you bring that up, please?
12 Forty-seven, rather. You have a letter -- this is in
13 evidence, Judge. This is a letter from Mr. Hurley dated May
14 17, 2021 where Mr. Hurley said -- denies that Jason Stone
15 had resigned as the CEO of Celsius KeyFi and still was
16 acting in that capacity.

17 And if I may, Judge, finally regarding Jason's
18 employment status, you asked for proof that he was ever
19 employed by Celsius. We have pointed out in the past,
20 including by e-mail dated March 31, 2021, the limited
21 liability company agreement with Celsius KeyFi, which Jason
22 Stone executed, expressly identifies Celsius KeyFi officers
23 as follows. Chief Executive Officer: Jason Stone. Jason
24 also held himself out as CEO of Celsius KeyFi including to
25 Celsius and third parties.

1 And if you go down, it says regarding Jason's
2 claim that he resigned from that position, Celsius has no
3 record of him ever having done so, and Jason recently has
4 indicated that the date of any resignation remains
5 undetermined.

6 So, I'm a little shocked to hear Akin Gump come in
7 here today and say he resigned on the 9th, when on May 17,
8 2021 they're denying there was ever a resignation. The fact
9 is, there was a twilight period when there was a winding up
10 of this relationship when he still was the CEO of Celsius
11 KeyFi and had authority to do this.

12 And so, Judge, what I'd say is a potential better
13 --

14 THE COURT: Let me -- let me stop you to ask a
15 question. Whoa, whoa, whoa. Stop, stop, stop. So, let's -
16 - assuming you're saying there was this twilight period that
17 he still had authority. Does that authority extend to
18 transferring assets from Celsius to Celsius KeyFi or to
19 Stone or KeyFi? So --

20 MR. FREEDMAN: Yes, Your Honor.

21 THE COURT: Okay. What's the basis for that?

22 MR. FREEDMAN: And let me explain -- yeah, well
23 let me explain that, because I think that's another issue I
24 need to correct with Mr. Hurley's characterization of our
25 arguments. He says our entire argument hinges on Alex

1 Mashinsky having approved the transactions. That is only
2 half of our argument.

3 So, our argument is that the transactions were
4 authorized, and there are two ways these transactions were
5 authorized. The first is Alex Mashinsky expressly
6 authorized them, and I'll cover that in a moment. I do
7 think it goes beyond just a Mr. Stone say-so and Mr.
8 Mashinsky say-so, and -- but we'll cover that in a minute.

9 The second way that these transactions were
10 authorized is because Jason Stone was the CEO of Celsius
11 Key-Fi who was entitled to determine their own profits and
12 make distributions, and I'm going to walk the Court through
13 that in a minute. But what I would -- what I would say on
14 that regard, Judge, is it is important I think -- we've
15 talked a lot about the services agreement, the asset
16 purchases agreement --

17 THE COURT: Take that down from the
18 (indiscernible) please.

19 MR. FREEDMAN: Yeah. Can you take it down, Mr.
20 Stone? Judge, we've talked about -- a lot about the asset
21 purchase agreement and the services agreement, but I think
22 it's important to take a step back and understand kind of
23 what was going on here.

24 So, Mr. Stone owns this company called KeyFi, and
25 he's doing decentralized finance activities on that with

1 that corporation. Celsius wants to bring Jason Stone and
2 KeyFi into the Celsius group of companies to start working
3 on these decentralized finance activities for Celsius.

4 And so, what Celsius does is they say we're going
5 to contract with you, Mr. Stone, KeyFi. To do so, we're
6 going to create a wholly owned subsidiary called Celsius
7 KeyFi, and they call it Celsius KeyFi because it's the
8 intermediary company between Celsius and KeyFi.

9 And so, what they say is Celsius KeyFi, our
10 Celsius company, is going to buy the assets of KeyFi, and
11 that's the asset purchase agreement. As part of that asset
12 purchase agreement, Celsius KeyFi, meaning Celsius, is
13 obligated to pay KeyFi, Jason Stone's own company, three
14 things: about \$60,000 in payments, 300,000-something sell
15 tokens which was like about \$2 million at the time, and a
16 profit share.

17 And so, as part of the purchase agreement, Celsius
18 KeyFi, meaning Celsius, is promising a portion of profit
19 share to KeyFi. Now, simultaneously with that, Celsius says
20 now what we're going to do is KeyFi --

21 THE COURT: But tell me where, Mr. Freedman,
22 where's the P&L for Celsius KeyFi? There is --

23 MR. FREEDMAN: It wasn't created -- it wasn't
24 created --

25 THE COURT: No, where is it -- point it to me. I

1 want to see -- there is none, right?

2 MR. FREEDMAN: There isn't, Judge, because it
3 couldn't be created without information from Celsius on the
4 cost of hedging, which they refused to provide. Judge, I
5 think it's important -- I think it's important to understand
6 there's one more step to this structure of companies, which
7 is you've got Celsius KeyFi is now this intermediary company
8 which is the company that's going to now be doing the
9 decentralized finance activities for Celsius, and as part of
10 that agreement, Celsius KeyFi enters into a services
11 agreement with Celsius, because now Jason Stone instead of
12 providing (indiscernible) activities through KeyFi, he's
13 doing it through Celsius KeyFi.

14 And as part of this deal, Jason Stone gets made
15 the CEO of Celsius KeyFi and gets given a lot of powers, and
16 I'm going to walk the Court through why there was
17 authorization.

18 However, Judge, this is the important point.
19 There needs to be a time for when this authorization ends,
20 because if it ends -- and I would submit to you that
21 potentially an early place for Celsius to claim it should
22 end would be when they issued their board letter to Jason
23 Stone saying return all Celsius assets, and that was March
24 26th.

25 And if you look at the transfers that occurred

1 after March 26th, Judge, you're looking at a total of
2 \$530,000. If you do it as of May 17th, Judge, the date that
3 Mr. Hurley denied that Mr. Stone had even resigned yet, the
4 total transfers are \$139,000.

5 And if you do it as of March 31st, the date of the
6 -- in the letter from Mr. Hurley saying we told you on March
7 31st you were still the CEO of Celsius KeyFi, the total is
8 \$238,000.

9 So, Judge, I want to circle back to where I
10 started. We don't disagree that there are some transfers
11 here, that there are some transfers that were unauthorized
12 but that amount is not in the millions of dollars. That
13 amount is either 139,000, 238,000 or 530,000.

14 I want to say, though, that does not include the
15 DAI transfer which is something completely different that I
16 want to get to separately, because that is not Celsius'
17 assets. They were not its property. It's our position that
18 that -- this was an airdrop that had nothing to do with
19 Celsius. And so, that is separate and apart we'll get to
20 that in a minute. But obviously that makes a huge
21 difference.

22 So, with that, Judge, I'd like to jump into the
23 merits of this conversation. To succeed on these claims,
24 Celsius is going to have to eventually convince a fact
25 finder and potentially a jury, Judge, I know that you know

1 there's a -- there's a stipulation to delay a motion to
2 withdraw the reference, see if we can stipulate to proceed
3 in front of you on this, but that Stone and KeyFi wrongfully
4 took assets.

5 And Judge, in order to do that, in order to
6 convince you that they wrongfully took assets, they must
7 convince this eventual fact-finder and now you sitting in a
8 preliminary injunction posture that they have a likelihood
9 of success on the merits, that Mr. Mashinsky did not
10 authorize those transactions and that Mr. Stone did not have
11 the authority to make those transfers as CEO of Celsius
12 KeyFi.

13 So, if we -- if we analyze the merits of these
14 claims, it requires a look at the evidence, not a look at
15 just bluster or talk about, you know, stealing or theft.
16 And so, we start -- I want to start with the Mashinsky
17 approval story, right, with that prong of the authorization,
18 Judge.

19 So, we're saying that these transactions are
20 authorized. I want to start with the -- Mr. Mashinsky
21 approved these transactions and approved these transfers,
22 because everyone believed Celsius KeyFi was profitable and
23 that it was therefore owed money and KeyFi was owed money
24 under the asset purchase agreement.

25 The evidence shows, Judge, that the parties

1 entered into an asset purchase agreement. The evidence
2 shows that under that asset purchase agreement, KeyFi would
3 be owed money if it made a profit, okay, however that term
4 is defined.

5 I'll note for you, Judge, that despite the fact
6 that Mr. Hurley has had possession of this asset purchase
7 agreement and services agreement for a year and a half, his
8 presentation yesterday included nothing in the language of
9 the contract which says that there should be a coin-based
10 accounting, and when this Court asked him to show language
11 in the contract showing there's a coin-based accounting, we
12 heard that it's very complicated and he'd like to make
13 submissions afterwards.

14 It's really not that complicated. The contract
15 defines the amount that gets paid to KeyFi as net profits.
16 And the definition of net profits specifically says in U.S.
17 dollars. It's just not -- it's not --

18 THE COURT: Is it your position that Mr. Stone
19 would be entitled to profits attributable to the rise in
20 value of coins?

21 MR. FREEDMAN: Judge, yes, that is the deal that
22 Celsius struck by virtue of hedging requirements.

23 THE COURT: All right. And at the same time would
24 he also -- would the decline in the value of coins diminish
25 the profit he'd be entitled to?

1 MR. FREEDMAN: I believe the answer to that is yes
2 unless the cost of hedging or the interaction of hedging
3 with the agreements change that.

4 THE COURT: All right. Go ahead.

5 MR. FREEDMAN: So, judge, the evidence in the case
6 shows that asset purchase agreement is entered into, profit
7 is --

8 THE COURT: One second, and I'll let you go on,
9 but is that addressed in your brief? I don't see that
10 really addressed in the plaintiff's brief.

11 MR. FREEDMAN: I think we talk about a U.S.
12 dollars-based accounting, Judge, and under a U.S. dollars-
13 based accounting, the price of the assets is what governs
14 what was returned.

15 THE COURT: It's not -- it certainly isn't clear
16 to me that either side has really addressed the issue of
17 what, if any -- how a profit calculation would be affected
18 by the rise or fall in the value of crypto coins. And so,
19 I'm going to want supplemental submissions from both sides
20 on that, but go ahead.

21 MR. FREEDMAN: So, Judge, understood and we'll
22 include that in post-hearing briefing, Judge.

23 So, you've got an asset purchase agreement.
24 You've got, it's clear and undisputed that profit -- net
25 profit is owed. Obviously nobody's expecting KeyFi to work

1 for free, although Mr. Mashinsky seemed to have a problem
2 with that yesterday.

3 The evidence shows that Celsius, month after
4 month, sent tens of millions of dollars, hundreds of
5 millions of dollars, to Celsius KeyFi to be managed by Mr.
6 Stone to the point where it was holding over \$1.4 billion of
7 Celsius digital assets.

8 And Judge, we saw that in the digital -- in the
9 general ledger that Mr. Mashinsky claimed he never looked
10 at. That was DX 35. And we saw that in the e-mail from Mr.
11 Mashinsky on the right, which is DX 40, saying the wallet
12 now shows \$1.4 billion in assets. And we heard that from
13 Mr. Nolan in the -- you can take that down. Thank you, Mr.
14 Stone. You heard that from Mr. Nolan who yesterday
15 testified that they transferred -- he was the man
16 responsible for deploying coins. They just continued month
17 after month transferring these assets.

18 That is not the behavior of a company that does
19 not believe the actions are profitable. And the evidence
20 shows, Judge, that Celsius KeyFi through Mr. Stone managed
21 these eye popping amounts of Celsius assets for over seven
22 months.

23 And the evidence shows that during that
24 relationship, Celsius considered KeyFi to be a very
25 profitable trading strategy and pushed hard for continued

1 deployment through Celsius KeyFi. Mr. Mashinsky testified -
2 -

3 THE COURT: All well and good, but nobody has
4 provided an actual P&L for that period.

5 MR. FREEDMAN: But Judge, we've demanded an
6 accounting and they refused to do it. We demanded an
7 accounting. There's a clear contractual right to an
8 accounting. It's black and white. We've --

9 THE COURT: But there also was a contractual -- I
10 -- you know, Mr. Hurley pointed to the language in the
11 services agreement that required Celsius KeyFi to prepare
12 the P&L, correct?

13 MR. FREEDMAN: Yes, Judge, but --

14 THE COURT: You don't disagree with it?

15 MR. FREEDMAN: I don't disagree with that, but
16 what I disagree with, Judge, is that there was --

17 THE COURT: And none was ever prepared, correct?

18 MR. FREEDMAN: But they could -- that's correct,
19 Judge, but they could not prepare it, and that's not fair,
20 right? It's not fair for Celsius to say to Celsius KeyFi --

21 THE COURT: But it was Mr. Stone's company for
22 which he was CEO that had the responsibility for preparing
23 the P&L, correct?

24 MR. FREEDMAN: But he couldn't -- yeah, but he
25 couldn't do it. He couldn't do it. That's like saying --

1 THE COURT: All right. I understand that.

2 MR. FREEDMAN: But -- and the reason he couldn't
3 do it is (indiscernible).

4 THE COURT: But it don't say -- I don't see
5 anything in the agreement that says oh, this is too
6 complicated. Mr. Stone's company --

7 MR. FREEDMAN: That's not what I mean.

8 THE COURT: -- can't -- wait - can't do it. It
9 says that's who's supposed to do it. It doesn't say that
10 Celsius is supposed to do it.

11 MR. FREEDMAN: Your Honor --

12 THE COURT: It says Celsius KeyFi is supposed to
13 do it. You agree with that much at least?

14 MR. FREEDMAN: I agree with that much, but I think
15 I'm talking past you unfortunately. And I'm going to try to
16 clarify what I'm saying, because no disagreement Jason Stone
17 as Celsius KeyFi had to prepare the P&L. No disagreement.

18 But you know, there's an impossibility defense,
19 and it's not because it's complicated. It's not because the
20 transactions were complicated. Mr. Stone could create that
21 P&L because the transactions aren't all that complicated.

22 What he couldn't do is he couldn't create a P&L
23 because Celsius refused to give the information needed to
24 create the P&L. So, it's Celsius that frustrated --

25 THE COURT: Well --

1 MR. FREEDMAN: -- Mr. Stone's ability to create
2 the --

3 THE COURT: -- the evidence is contested -- the
4 evidence is --

5 MR. FREEDMAN: I understand that. I understand
6 that, Judge.

7 THE COURT: Stop. Stop until I ask my question.
8 The evidence is controverted as to who was responsible for
9 hedging, Celsius or Celsius KeyFi. Do you agree with that?
10 It's -- your position is it was Celsius. Their position is
11 it was Celsius KeyFi, correct.

12 MR. FREEDMAN: I do, Judge.

13 THE COURT: Okay, go ahead.

14 MR. FREEDMAN: But my point is, and I don't
15 dispute that it's disputed, it is disputed, right, Judge?
16 That's not in dispute. But what is in dispute is we,
17 Celsius KeyFi, had to prepare the P&L. And what we're
18 saying is we could not produce that P&L because we did not
19 have the inputs we needed to create that P&L, i.e. the cost
20 of hedging. And so there was no ability to create the P&L.
21 Then --

22 THE COURT: Wait. Stop for a second. Do you -- I
23 know you say that it was Celsius responsible for hedging.
24 They say it was Celsius KeyFi. If the trier of fact
25 concludes that it was Celsius KeyFi who was responsible for

1 hedging, then your argument goes away, doesn't it? Because
2 if they were responsible for hedging and they didn't do it,
3 you needed to know the cost of hedge in order to calculate
4 the P&L, then it's at Mr. Stone's feet for not having done
5 it, correct?

6 I know you dispute who had the responsibility but
7 I'm saying the trier of fact concludes that it was Celsius
8 KeyFi that was responsible for hedging, it's back in Mr.
9 Stone's corner for not having a P&L.

10 MR. FREEDMAN: To some extent that's true, Judge.
11 I would dispute that any trier of fact could come to that
12 position now with an expedited discovery schedule and based
13 on limited evidence we have, but -- to some extent. But I
14 also think that even if Mr. Stone failed to deliver the P&L
15 while he was CEO of Celsius KeyFi, even if that's true that
16 he failed and it's his problem and he was wrong for not
17 producing that P&L, that doesn't know how Celsius to say too
18 bad, so sad, you're not owed any money for seven months of
19 work.

20 THE COURT: Okay. That's what's called a breach
21 of contract lawsuit, and what I'm saying is I've seen no --
22 nothing in any written agreement that would authorize Stone
23 to just take it with self-help --

24 MR. FREEDMAN: So, I think the authorization Stone
25 being able to take it comes either through Mr. Mashinsky's

1 oral authorization, I'd like to get to why I believe in a --
2 in a review of the evidence and credibility it appears Mr.
3 Mashinsky authorized it, or at least it is a significantly
4 disputed issue of whether or not he authorized it, or that
5 Mr. Stone had the ability to make these transfers as CEO of
6 Celsius KeyFi, and I'll get to that in a minute.

7 So, I agree with you, Judge. But I -- what I --
8 what my point is that --

9 THE COURT: He didn't make the transfers from
10 Celsius KeyFi. He made the transfers from Celsius. It was
11 --

12 MR. FREEDMAN: No, Judge, he made --

13 THE COURT: -- coming out of Celsius' wallets that
14 he had -- he had the private keys for.

15 MR. FREEDMAN: Well, I mean, Judge, I think that
16 that's not how I understand what happened. What I
17 understand the evidence shows is that Celsius funded --

18 THE COURT: Point me to the specific evidence.
19 Point me to the specific evidence then, because I --

20 MR. FREEDMAN: So, Judge --

21 THE COURT: My understanding of the evidence was
22 we're talking about transfers that came from Celsius, and he
23 was not the CEO of Celsius.

24 MR. FREEDMAN: So, what happens, Judge, is Celsius
25 transfers money into the OXB-1 wallet. You'll recall that's

1 the wallet that -- okay. That wallet, the OXB-1 wallet, is
2 a wallet that Celsius created and then handed to Celsius
3 KeyFi for use as its custody.

4 So, digital assets that went into the OXB-1 wallet
5 became within the custody, control, and -- custody and
6 control of the OXB-1 wallet, which was a Celsius KeyFi
7 wallet, and the transfers were made from that OXB-1 wallet
8 into other wallets. And as the CEO of Celsius KeyFi, we
9 maintain Mr. Stone had the authority to make these
10 transfers. That's argument two on -- in the authorization
11 prong.

12 So, Judge, I mean, but let's get back for a minute
13 to the Mashinsky authorization, right? And it's important
14 to understand the mindset of the individuals, because what
15 we're trying to figure out is was Mr. Mashinsky in a
16 position where he said to Mr. Stone absolutely, go ahead and
17 take some profit share? And to do that, you need to put
18 yourself into the mindset of these individuals.

19 Mr. Mashinsky testified yesterday that he
20 authorized transfers from Celsius to Celsius KeyFi because
21 he thought Celsius KeyFi was profitably deploying assets.
22 Mr. Mashinsky testified that he praised Mr. Stone, that he
23 told Celsius employees that KeyFi -- Celsius KeyFi was
24 profitable, and that he thought Celsius KeyFi was at the
25 forefront of decentralized finance. Clearly, he thinks this

1 man, meaning Mr. Stone, is successfully implementing wallets
2 and making a significant profit.

3 Mr. Nolan testified that the belief at Celsius was
4 that KeyFi was profitable, that Celsius CFO Ms. Harumi
5 Thompson, told him that KeyFi was profitable in 2020 and
6 2021, that Alex Mashinsky told Mr. Nolan that KeyFi was
7 profitable in 2020 and 2021, and shared details of how the
8 profitability was working with him, that Mr. Stone told Mr.
9 Nolan that KeyFi -- Celsius KeyFi was profitable, and that
10 Mr. Nolan had personally formed the belief that KeyFi --
11 Celsius KeyFi was highly profitable. All right?

12 And Mr. Nolan also provided good insight into Mr.
13 Mashinsky's state of mind. He said Mr. Mashinsky was pretty
14 forceful, and that's a quote, in demanding Mr. Nolan deploy
15 more assets with KeyFi because it was profitable. He was
16 impeached from his deposition, which showed that Mr.
17 Mashinsky pressured him to work with KeyFi, and on the
18 stand, he said that pressure lasted up until the day KeyFi
19 resigned.

20 Mr. Mashinsky was pushing for deployment with
21 Celsius KeyFi until the very, very end. Mr. Nolan testified
22 Mr. Mashinsky would praise Mr. Stone, and Mr. Mashinsky
23 would badmouth other employees to prop up Mr. Stone. And
24 so, we see a company that believes Mr. Stone and Celsius
25 KeyFi, regardless of this Court will eventually -- or jury

1 or -- will have to determine whether or not it actually was
2 profitable at some point, but at the time -- we're looking
3 at was the authorization. At the time, everyone thought
4 this was profitable, highly profitable. So did Mr. Stone.

5 Mr. Nolan told him that at the time, Mr. Stone
6 said he was entitled to profits, discussed that, the amounts
7 of those profits, and discussed it openly with Mr. Nolan.
8 And Mr. Mashinsky, we saw an e-mail in DX 41 -- can you
9 bring that up, Mr. Stone? We saw an e-mail from Mr.
10 Mashinsky in DX 41 where he admitted that Mr. Stone had made
11 gains. It's in writing.

12 Mr. Stone, can we -- there we go, right? And this
13 is an e-mail on January 18th from Alex Mashinsky to do a
14 coin count and audit to make sure all client assets are
15 returned and book the gains Jason created.

16 So, we already have -- you're looking at Mr.
17 Mashinsky's state of mind on January 18th. He's right --
18 everybody knows Mr. Stone is creating gains and profits.
19 And then we saw -- thank you, Mr. Stone. You can take that
20 down.

21 We saw that Celsius' behavior over a seven-month
22 period -- we looked at the general ledger and this behavior
23 is the behavior of a company that believes its strategy is
24 working. They send 22 million in August, 54 million in
25 September, 81 million in October, 108 million in November,

1 36 million in December.

2 So, Judge, the evidence gets us to a place where
3 in January 2021, KeyFi has deployed hundreds of millions of
4 dollars in assets for Celsius. KeyFi has performed DeFi --
5 Celsius KeyFi has performed DeFi services for over six
6 months for Celsius.

7 Celsius, the company's actions, their writings and
8 their statements all confirmed that KeyFi is profitable and
9 everyone is operating under the theory that KeyFi is
10 profitable. The APA clearly contemplates that KeyFi is
11 entitled, not Celsius KeyFi but KeyFi, is entitled to a
12 percent of those profits and contemplated payments to be
13 made on December 31, 2020.

14 But come January and Celsius hasn't made a single
15 profit-sharing payment to KeyFi despite the fact that
16 Celsius KeyFi has been profitably managing these services
17 for a very long time.

18 THE COURT: Show me the P&L that it was
19 profitable.

20 MR. FREEDMAN: Judge, there isn't a P&L. We know
21 that, but what I'm telling you is the question today for
22 this Court is were the transactions authorized, and I'm
23 telling you those transactions were authorized because Mr.
24 Mashinsky thought this was the most profitable deployment
25 that he had, and he was sure Mr. Stone was generating

1 profits. And so, when Mr. Stone came to him and said, hey,
2 we don't have this P&L yet, but I'm clearly extraordinarily
3 profitable, can I take some money out, Mr. Mashinsky said
4 yes, because everyone was like this guy is really in money.

5 THE COURT: He says Mashinsky says yes, and
6 Mashinsky says no.

7 MR. FREEDMAN: Well, but Judge, to be fair, Mr.
8 Mashinsky said no to a lot of things that I don't think this
9 Court was believing yesterday either. I mean, we can go
10 through those, but at some point yesterday, the judge told
11 me I was beating a dead horse.

12 I mean, Mr. Mashinsky lied to the public on
13 multiple occasions about Celsius' strength. He lied to the
14 public about the -- getting a thumbs up from the regulators.
15 He literally -- two days before he froze withdrawals he
16 looked at the public in the eye and was like we've got no
17 problems. We've got billions of liquidity. This is not a
18 trustworthy individual.

19 THE COURT: You know, Mr. Freedman, I don't think
20 either of you want to be resting this case on the
21 credibility of either Mashinsky or Stone, but go ahead.

22 MR. FREEDMAN: Well, Judge, I understand that
23 although I would submit to you that if it is a question of
24 the credibility of Mr. Mashinsky and Mr. Stone, Mr. Stone is
25 going to win that fight, although --

1 THE COURT: You think so. You think so?

2 MR. FREEDMAN: That's what I think the -- and

3 Judge, it's not just -- but the important thing is, I mean,

4 I do. Mr. Mashinsky was the CEO of a massive company that

5 defrauded thousand -- millions of investors, hundreds of

6 thousands of investors. Mr. Stone didn't do that. We --

7 THE COURT: And Mr. Stone, you know, is alleged to

8 have taken \$10 million dollars that wasn't authorized.

9 MR. FREEDMAN: He's alleged to have taken it that

10 wasn't authorized, and we've shown Your Honor under

11 expedited discovery schedule numerous pieces of evidence

12 that show that everyone at this company believed that this

13 was profitable and that these transactions were authorized.

14 And Judge, there's another thing. You got to see

15 yesterday Mr. Mashinsky on the stand and you got to see

16 yesterday Mr. Stone on the stand. All right? Mr. Mashinsky

17 on the stand yesterday was evasive. He pretended not to

18 understand simple questions. He claimed he'd never seen the

19 general ledger of the company he was the CEO of. He claimed

20 not to be able to click a few buttons on Etherscan to see

21 where the NFTs were being purchased.

22 Judge, I'd tell you to compare that to the

23 behavior of Mr. Stone on the stand. Mr. -- and even before

24 he got on the stand, he spent dozens of hours creating a

25 detailed spreadsheet tracking every single transaction, sat

1 for numerous depositions, answered every single question.
2 He hasn't hidden transactions. He gave direct answers to
3 the questions Mr. Hurley was asking for him yesterday, and
4 while he hasn't yet been able to locate written
5 communications he thinks exist, quite frankly discovery has
6 just begun.

7 And I take issue with the idea that under an
8 expedited discovery schedule it's tough to produce an entire
9 e-mail inbox. It's actually the easiest thing to do. You
10 just take the e-mail inbox and you give it to us.

11 We didn't get it. We have some of those e-mails,
12 yes, not all of them. But Judge, it's not -- this is not an
13 exercise of is Mr. Mashinsky the truth teller or Mr. Stone
14 the truth teller. That's not what this is, because there's
15 much more than that. The allegation that KeyFi was stealing
16 NFTs, it doesn't add up. It doesn't make common sense.

17 The facts show that everyone thought KeyFi was
18 wildly profitable, owed money, and had not been paid. OXB-
19 1's purchases of NFTs, Celsius KeyFi's purchases of NFTs
20 were made on a public blockchain. The facts show that a few
21 clicks -- Mr. Stone showed the court Etherscan. A few
22 clicks on the screen will show you that these NFT purchases,
23 you literally enter the address into Etherscan, click ERC-
24 721 tokens, and the purchases come up in a long list on
25 their dates.

1 KeyFi -- also Mr. Stone, he wasn't secretive about
2 these purchases. He opened a highly visible Twitter account
3 and tweeted about these purchases. The OXB-1 Twitter
4 account was one of the largest twitter followings in DeFi
5 activities at the time when it was opened. It had tens of
6 thousands of followers.

7 And if you're tweeting about the -- and not only
8 was he tweeting about these purchases that they're claiming
9 were theft, he tweeted about them five days after Mr.
10 Mashinsky scolded him for tweeting. I mean, that's not the
11 behavior of a thief. That's not the behavior of somebody
12 who thinks he's not authorized to take these -- to take the
13 -- make these transfers. You don't go around broadcasting
14 it on Twitter. You don't go around making these public
15 purchases.

16 And Mr. Nolan made the same testimony. His
17 testimony also demonstrates that Mr. Stone was not acting
18 like a thief. Mr. Nolan testified that he knew about the
19 Twitter account, too, and that it was a popular Twitter
20 account. He talked about the Twitter account with both Mr.
21 Stone and with Celsius' CFO and that he knew Stone had
22 purchased NFTs prior to his departure and that
23 contemporaneous --

24 THE COURT: Look, Mr. Stone's self-promotion on
25 Twitter is not going to carry this case for him.

1 MR. FREEDMAN: But Judge, my point is it shows the
2 state of mind were the transactions authorized or not. This
3 Court has to make a determination of likelihood of success
4 on the merits. Were these transactions authorized? And I
5 would submit to you that Mr. Stone may be a lot of things.
6 He's not an idiot, and only an idiot would steal NFTs and
7 tweet about them to thousands of followers when your boss
8 has just told you to stop tweeting and when you've got
9 literally Mr. -- your boss is following your Twitter
10 account. I mean, that's just not the behavior of a thief.

11 So, when this Court has to say were these
12 transactions authorized, I think you have to say it's -- Mr.
13 Stone's either a complete idiot or these transactions were
14 authorized. And I know Mr. Stone, and I think you saw Mr.
15 Stone on the stand. He's not an idiot.

16 So, finally, Judge, we know that there's another
17 piece to this puzzle. Mr. Mashinsky has authorized payment
18 in the form of NFTs before. He had Celsius pay his wife two
19 NFTs for work. This is not like it's never happened before.
20 This has happened before.

21 So, Judge, when you are asked to look at the
22 global picture of were these transactions authorized by Mr.
23 Mashinsky, I'd submit to you and I understand the Court
24 pushed back, that if you're weighing the credibility of
25 these two witnesses, Mr. Stone wins.

1 But I'm not asking you to just do that. I'm
2 asking you to look at the totality of the circumstances and
3 I'm telling you it doesn't make sense that Mr. Stone is a
4 thief. The facts don't line up. He was open and
5 transparent about what he was doing. That's not what a
6 thief does.

7 When you embezzle money from a company, you don't
8 do it in broad daylight and tell everybody you're doing it,
9 and if you do, the company slams you, cuts you off, fires
10 you, gets you indicted. None of that happened.

11 THE COURT: Well, he may have believed --

12 MR. FREEDMAN: It wasn't until months later that
13 Mr. Hurley walks in and --

14 THE COURT: Stop. He may have believed that he
15 was entitled to money, but that doesn't entitle him to self-
16 help.

17 MR. FREEDMAN: Well, but Judge, the self-help is
18 what happened after the authorization ended, and we've
19 conceded that there --

20 THE COURT: There was no -- wait a second.
21 There's disputed issue of fact whether there was
22 authorization, okay? Even if I credit Mr. Stone that he was
23 authorized to do it, it's one thing to do it while you're --
24 while he's still with the company and another thing after,
25 and that's why I asked for a breakdown of transfers before

1 and after that.

2 I know you've argued that it wasn't a firm
3 resignation as of the date of the letter, that it was a
4 transition period. I'll have to consider that. You gave a
5 breakdown for transfers as of particular dates, March 26th
6 \$530,000 after that date, and you argued the number goes
7 down from there depending on what data you use, and I'm
8 going to require additional submissions where you make that
9 point quite clear. That -- I didn't see that breakdown in
10 the brief that was filed on behalf of Mr. Stone
11 (indiscernible). Go ahead.

12 MR. FREEDMAN: Understood, Judge, and I'm happy to
13 include that. I want to address the DAI transfer, Judge,
14 because there's \$1.4 million worth of DAI that's transferred
15 afterwards, and I said earlier that I was excluding that
16 from my calculations, and I excluded it for a reason.

17 I think the Court understands what happened here,
18 which is there was a malicious attack and as a result of
19 that malicious attack, there was a liquidation on the
20 compound protocol, which resulted in certain ETH being
21 forcibly sold at certain prices.

22 Mr. Stone's testimony yesterday, and it's
23 undisputed, is that actually didn't result in a loss for
24 Celsius because while the --

25 THE COURT: Well, that was not -- it was -- it

1 definitely was disputed yesterday.

2 MR. FREEDMAN: I'm not -- well, the --

3 THE COURT: Mr. Hurley presented evidence from
4 Stone himself about people having suffered loss. So, don't
5 tell me it was undisputed that there was no loss.

6 MR. FREEDMAN: Well, it was my understanding that
7 Mr. Stone testified that because the ETH was purposed back
8 that day or shortly thereafter at a much less expensive
9 price, there actually wasn't a loss to Celsius.

10 That's how I recall the evidence, Judge. I don't
11 have a transcript in front of me. You're the fact-finder.
12 If you remember it differently, you remember it differently.
13 But what I will say is under that understanding of the
14 evidence, even if there was some small loss to Celsius, that
15 \$1.4 million worth of DAI was not Celsius assets. That \$1.4
16 million worth of DAI was literally dropped into a wallet by
17 the compound protocol. And the reason it was dropped into
18 that wallet was the result of months-long lobbying effort by
19 Mr. Stone to get that accomplished.

20 And so, he lobbied the compound community to make
21 that airdrop. They literally just dropped it in. That
22 happened to be the address they dropped it into because
23 that's the address he was using as his identity to lobby for
24 it. And so, then he did --

25 THE COURT: Where did the value go?

1 MR. FREEDMAN: And so, then he did -- he took
2 those -- Mr. Stone took them and distributed I think to some
3 of his friends, who as you said, one of them purchased a
4 house -- down payment on a house and he took some of it
5 himself.

6 But my point is it's different in character and in
7 kind, because it's not -- in our view it's not a Celsius
8 asset. It was airdropped by the compound protocol.

9 THE COURT: I don't understand that. That I do
10 not understand at all.

11 MR. FREEDMAN: Well, Judge, let's say you -- you
12 know, me and Mr. Roche started a business together and we
13 use a bank account and both of our names are on that bank
14 account, and then I go out and lobby for there to be some
15 sort of payment to me for -- and I spend months doing that
16 and then they say, you know what, fine, and they dropped the
17 money into -- they transfer the -- wire transfer the money
18 into our joint account and then I take those funds. That's
19 our --

20 THE COURT: Why wasn't it Celsius' property? Why
21 shouldn't it have been dropped into a Celsius wallet?

22 MR. FREEDMAN: Well, it was dropped into this
23 wallet that would belong to Celsius KeyFi, and that --
24 because Mr. Stone has since left the company, but at the
25 same time it was the result of his efforts and the fruits of

1 his labor. It wasn't Celsius (indiscernible) --

2 THE COURT: And he didn't have to ask -- he didn't
3 have to ask Celsius, oh, it's okay if I keep it and if I
4 give half of it to my co-founder or anything like that,
5 right?

6 MR. FREEDMAN: I mean, would that have been a best
7 practice?

8 THE COURT: That's your position? That's your
9 position.

10 MR. FREEDMAN: No, no, no, I -- that -- our
11 position is as a legal matter he didn't have to. Now, to be
12 clear, if the judge -- if the judge or a jury or whoever
13 ends up finding that he wasn't entitled to take it, he'll
14 return it. But my point is, it's not an unauthorized
15 transfer.

16 THE COURT: Where is the money now? Where is the
17 money now? Where's the value --

18 MR. FREEDMAN: I think Mr. Stone testified to that
19 on the stand yesterday, but I don't have the transcript in
20 front of me, Judge.

21 THE COURT: What did he -- what's your
22 recollection of what he said?

23 MR. FREEDMAN: My recollection is that half of it
24 went to -- or a third of it went to his co-founders who one
25 of them got a car, one of them put a down payment on a

1 house, and that he --

2 THE COURT: And he didn't remember what he did
3 with his share?

4 MR. FREEDMAN: Honestly, Judge, I don't remember
5 what he said on the stand yesterday. If that's your
6 recollection, I'm not going to dispute it.

7 THE COURT: You seem to remember everything else
8 about the transcript except what Mr. Stone did with the
9 assets that he received.

10 MR. FREEDMAN: I spent a lot of -- Judge, I spent
11 a lot of time yesterday --

12 THE COURT: (Indiscernible) look, you're showing a
13 very clear recall of facts other than what Mr. Stone got and
14 what he did with hit.

15 MR. FREEDMAN: I'm not sure what the Court's
16 insinuating, but I -- Judge, I -- the facts I recall are the
17 facts that I recall as a result of my efforts with my team
18 yesterday from last night. I can assure you there's nothing
19 going on here. I'm not hiding anything from the Court.
20 There's a transcript. If the Court wants post-hearing
21 submissions, we will (indiscernible) that transcript.

22 THE COURT: Tell me -- I want to know -- it may be
23 unflattering to your client. What's your recollection of
24 what the testimony in the record is with respect to what Mr.
25 Stone did with that -- the value of those assets that came

1 back into the wallet.

2 MR. FREEDMAN: Which assets?

3 THE COURT: Yes, what did he do with it?

4 MR. FREEDMAN: Which specific --

5 THE COURT: What's your recollection of the
6 testimony? You have a very clear recollection of things
7 that you like but somehow you don't really remember things
8 that may not be very flattering for Mr. Stone.

9 MR. FREEDMAN: Judge, which specific assets are we
10 talking about? The DAI?

11 THE COURT: Yes.

12 MR. FREEDMAN: Again, Judge, I think I told you
13 that half -- I think a third of it or some portion went to
14 his co-founders and he doesn't know where that is, and then
15 he kept --

16 THE COURT: And what happened to the portion that
17 came to him?

18 MR. FREEDMAN: Can I have a minute, Judge?

19 THE COURT: Yes.

20 MR. FREEDMAN: Judge, now I -- what I recall now
21 and having conferred is he said some of it got transferred
22 into his bank account and co-mingled with his other funds
23 and he can't tell -- he can't tell what happened to it.

24 THE COURT: Go ahead.

25 MR. FREEDMAN: Okay. So, Judge, I want to -- I

1 want to pivot from here, from the -- under the authorization
2 argument, and Mr. Mashinsky authorized it. I want to pivot
3 to -- it was authorized because Mr. Stone was the CEO of
4 Celsius KeyFi.

5 Before I do that, though, I want to point out that
6 this Court is sitting in a preliminary injunction posture.
7 I know the Court's familiar with the standard of a
8 preliminary injunction, but I would like to point out one
9 portion, because I think Mr. Hurley misstated the exact
10 standard.

11 Under the 2nd Circuit, you have to show likelihood
12 of success on the merits or you have to show sufficiently
13 serious questions have been raised and -- and this is the
14 part that was missing from the presentation -- and that the
15 balance of hardships tips decidedly in their favor.

16 So, if you go -- if you go under the likelihood of
17 success prong, you don't need to do that necessarily, but if
18 you go under the sufficiently serious questions, you need to
19 show the hardships, and I'm going to return to the hardships
20 in a minute, because Judge, the hardships aren't anywhere
21 close here. But let me transition -- under our
22 authorization argument, let me transition from Mr. Mashinsky
23 authorized it to Mr. Stone had the authority.

24 So, we went through the structure of how this
25 company works and how KeyFi became -- you know, KeyFI got

1 bought out for a percentage of profits. Mr. Stone became
2 the CEO of Celsius KeyFi and was providing services under
3 those agreements.

4 So, I'd like to, Judge, pick up the asset purchase
5 agreement. Mr. Stone, could you share the relevant portion?
6 This is DX 40, Judge, and I'm on the first page of that --
7 of that exhibit.

8 THE COURT: I have it open in front of me.

9 MR. FREEDMAN: Thank you. Judge, I need it just
10 to see it if you don't mind. I'm sorry.

11 THE COURT: That's fine. Put it up on the screen.

12 MR. FREEDMAN: That's tough to see, but okay. You
13 know what? I have a little bit of it here. All right.

14 So, Judge, under the asset purchase agreement, the
15 KeyFi, meaning the company Stone owns, majority, is the
16 seller because it's selling its assets. Celsius KeyFi, the
17 wholly owned subsidiary of Celsius, is the buyer, and
18 Celsius Network Limited is the parent.

19 So, now if we go -- and that that definition is
20 important to keep in mind. Let's jump to Section 3 of that
21 asset purchase agreement. Mr. Stone, can you bring up that
22 portion?

23 And so, now I'm at DX 40. I'm at Page 7 of DX 40,
24 Judge.

25 THE COURT: Okay, I'm there.

1 MR. FREEDMAN: PX 40. PX 40. I'm sorry.

2 THE COURT: I'm there.

3 MR. FREEDMAN: All right. So, under Section 3 of
4 the asset purchase agreement, Celsius KeyFi is the party
5 responsible for paying KeyFi. So, let's go through this.
6 As the sole and exclusive consideration for the seller,
7 that's KeyFi, Stone's company, commitments under this
8 agreement, the buyer, that's Celsius KeyFi, the company
9 Stone is the CEO of, shall pay or cause to be paid to the
10 seller, to KeyFi, Stone's company, in immediately available
11 funds by wire transfer any earn-out payment.

12 So, under the asset purchase agreement, the
13 company that Mr. Stone is the CEO of is responsible for
14 paying Mr. Stone's company, and it's this -- this is the
15 power in the clear black and white terms of the contract
16 that authorized Mr. Stone, while he was the CEO of Celsius
17 KeyFi -- in fact, he was obligated as the CEO of Celsius
18 KeyFi a portion of the earn-out payment.

19 And Judge, the services agreement, that confirms
20 this relationship as well. So, Mr. Stone, can you pull up -
21 - is it DX or PX 41? PX -- PX 41, Judge. Can we pull up
22 the services agreement in PX 41?

23 So, here -- is that -- yeah, PX 41. Here, Judge,
24 the services agreement confirms the same -- the same
25 relationship because the service agreement refers to Celsius

1 KeyFi, the entity that Stone was the CEO of, as KeyFi,
2 confusingly, and Celsius Network Limited as Celsius.

3 And under Schedule A of the services agreement
4 titled Material Service and Relationship Terms, it was
5 Celsius KeyFi that -- and I'm going to quote, Mr. Hurley
6 showed you this, too, KeyFi, which means Celsius KeyFi, the
7 company that Stone was the CEO of, shall retain control of
8 its internal budget and profit and loss determination in
9 good faith.

10 So, KeyFi had to make a good faith profit and loss
11 determination and KeyFi, Celsius KeyFi, the company Stone
12 was the chief executive officer of, had to determine profit
13 and had to pay profit.

14 Now, the Court has said, well, where's the profit
15 and loss statement --

16 THE COURT: And you agree -- just a second, Mr.
17 Freedman. You agree, and I think we sort of fenced about
18 this point before, that Celsius KeyFi never produced a
19 profit and loss statement that would be used for determining
20 what distribution is required, correct?

21 MR. FREEDMAN: I do agree with that, Judge. But I
22 will tell the Court that there is no requirement to produce
23 a profit and loss statement in the contract. The contract
24 says KeyFi shall retain control of its internal budget and
25 profit and loss determination, and I --

1 THE COURT: So, where -- show me a piece of paper.

2 MR. FREEDMAN: Well, but Judge, I have to --

3 THE COURT: Wait, stop. Let me ask my question.

4 MR. FREEDMAN: Okay.

5 THE COURT: Show me a piece of paper that has that
6 profit and loss determination, because I don't think there
7 is one. Is there?

8 MR. FREEDMAN: As far as I know, Judge, there's
9 one document that showed one -- Judge, can I have one
10 moment?

11 THE COURT: Yes, you can.

12 MR. FREEDMAN: Judge, a couple things. There is
13 one document we're going to pull up on the screen for you
14 now showing a small percentage of profit that was in the
15 general ledger from KeyFi.

16 However, I think, Judge, that it's fair to say
17 that what was going on was Stone was having conversations
18 with Mashinsky and others about profitability and KeyFi was
19 providing not a full comprehensive review but screenshots of
20 this company -- you heard a lot about this website called
21 De-Bank which showed profitability and was showing these two
22 people and then in good faith made a determination that he
23 was -- he had earned so much profit, he was able to take
24 some, the final amount to be determined when a full profit
25 and loss statement had been created.

1 But again, Judge, there doesn't need to be a
2 written P&L. It's a little short, Judge, but if you go to
3 DX 34 -- Mr. Stone, what's the line -- what's that line?
4 This is the huge spreadsheet, Judge. We'll find the line
5 for you, but if you look at the bottom one, it says 10
6 percent accrual for KeyFi revenue share and it shows a \$1.2
7 million number.

8 So, this is in the general ledger of Celsius. So,
9 you do see a written confirmation from Celsius that some
10 profit share was owed. Again, Judge, stepping back into our
11 argument here, Celsius KeyFi, who Mr. Stone was the CEO of,
12 had the ability and in fact indeed the obligation to pay
13 KeyFi, the company Stone was the owner of, a profit share
14 and one that he had to determine in good faith, not one that
15 required a full-blown written profit and loss statement.

16 And Judge, this is why the audit right exists,
17 right, in the asset purchase agreement which allows KeyFi,
18 Stone's company, to invoke the audit right against Celsius
19 KeyFi, the company that Stone was the CEO of, the one that
20 was obligated to make the earn-out payment, right? This all
21 lines up. The agreements all line up.

22 So, Mr. Stone, can you pull up PX 40 at 16, the
23 audit right? And I'm at Page 16 of that -- of that
24 document, Judge.

25 THE COURT: I see it.

1 MR. FREEDMAN: You see it? So, it says within the
2 later to occur, 14 calendar days -- I'm in Romanette I,
3 right, after any payment by buyer, okay, that is -- buyer is
4 Celsius KeyFi, the company Stone is the CEO of, due under
5 this agreement or 30 calendar days after such agreement, if
6 seller, that's KeyFi, the defendant, if seller is
7 dissatisfied with the payment or if non-payment occurs, non-
8 payment occurred, seller, that's defendant, may invoke an
9 audit of buyer, that Celsius KeyFi, plaintiff, relevant
10 records using seller's chosen auditor who shall be
11 nationally licensed CPA.

12 So, Judge, all of these agreements line up.
13 Celsius KeyFi, the company Stone was the CEO of, had a
14 contractual obligation to pay the defendant a profit share,
15 and Celsius KeyFi, the company that Stone was the CEO of,
16 had the right to determine profits in good faith, not
17 subject to the creation of a formal P&L.

18 Now, should a formal P&L be created? Yes. And
19 when no payment occurred from the plaintiff to the
20 defendant, the defendant invoked the audit right and the
21 plaintiff ignored it.

22 MR. FREEDMAN: Okay, I started out with Mr. Hurley
23 by saying that I think that you have presented a good faith,
24 colorable claim for breach of contract and that Stone was
25 entitled the audit. Where I part company is that there is

1 no justification for self-help, okay? It may well be that
2 you had a good claim that they -- that Celsius breached the
3 contract. You sought to trigger the audit provisions; they
4 didn't respond and that would justify, you know, when you
5 filed a state court action, for example, that KeyFi was
6 entitled to an audit -- to trigger the audit and may well
7 have been entitled to a profit share. Okay?

8 I separate that out, and in my mind that's quite
9 different from saying the heck with you, I'll just take the
10 money. You come and get me.

11 MR. FREEDMAN: I -- Judge, I don't disagree.
12 Here's -- we don't disagree, and I -- Judge, I opened this
13 this argument saying that there is certain transfers that
14 are -- were unauthorized. I conceded that off the bat. I
15 got up here and that's the first thing I said.

16 I said it matters the date, and now you know,
17 Judge, after I've walked you through this argument why the
18 date matters, because so long as Stone was CEO of the
19 company that was required to make the payment to the
20 defendant, he was authorized to make those transfers.

21 THE COURT: Yeah, we -- I -- well, look, I -- the
22 fact that he was CEO would not authorize him -- would not in
23 my view, unless you've got some authority for this, that he
24 unilaterally could decide I'm just going to take the \$10
25 million. The heck with them. They either will do the

1 accounting or -- you can't because you're CEO, you just
2 can't decide the heck with you, I'm just going to take it.

3 MR. FREEDMAN: But I don't -- Judge, I don't think
4 that's what happened. He had -- he had to make a good faith
5 determination. So, if we go to PX 41 --

6 THE COURT: There's not a single document -- I --
7 look, you're pointing to DX 34 and the line that shows 10
8 percent accrual of KeyFi revenue share you say is --

9 MR. FREEDMAN: Which is Line 67.

10 THE COURT: I'm sorry?

11 MR. FREEDMAN: It's Line 67, Judge. I promised
12 you I'd give you that number.

13 THE COURT: Okay. Let me -- I'm making a note of
14 that. Okay. And that to me is far from an authorization to
15 show an authorization to just do it.

16 MR. FREEDMAN: But Judge, he was the chief
17 executive officer -- chief executive officer of the company
18 and pursuant to the contract --

19 THE COURT: You think a chief executive officer
20 can just without any authority from anybody else, without
21 board authority, no matter what the dollar amount is, they
22 can just do it? Take it for themselves? I don't know of
23 any law that says that.

24 MR. FREEDMAN: No, Judge, he's acting pursuant --
25 he's acting pursuant to --

1 THE COURT: (Indiscernible) prosecuted all the
2 time for just taking the money and it's not a defense to say
3 oh, I'm the CEO. I can take what I wanted. That's not the
4 law.

5 MR. FREEDMAN: But Judge, this isn't a situation
6 where Mr. Stone just walked in as CEO of the company and
7 just took money, right? I mean the company that he's the
8 CEO of had a contractual obligation to pay the defendant.

9 THE COURT: And if they didn't do it, he's got a
10 breach of contract, and you just can't do it yourself.

11 MR. FREEDMAN: No, no, no. But Judge, he was the
12 CEO of the company.

13 THE COURT: Let me stop. Stop, stop. You're
14 going to have to brief why his being CEO would give him the
15 authority to just take \$10 million. I'm using that number.
16 That may not be the right number, okay?

17 MR. FREEDMAN: I understand.

18 THE COURT: That he can just do it without -- it's
19 an affiliate. It -- you know, I have never -- I have never
20 -- look, I've never seen a case that says, you know, unless
21 there are board resolutions and all sorts of authority, CEO
22 just can't decide to take \$10 million and say, well, of
23 course, I'm the CEO. I can do what I want. That's
24 nonsense. If you've got authority that says he can, I want
25 to see it.

1 MR. FREEDMAN: And judge, I don't think -- I think
2 -- we're not disagreeing. I'm not saying the CEO can just
3 transfer willy nilly whatever he wants, and we will brief
4 this, but my point is that Jason Stone was the CEO of a
5 company that had a contractual obligation to make that \$10
6 million payment. And we'll brief it. It's in the -- it's
7 in the contracts. And my statement to you is he was well
8 within his authority as CEO of fulfilling his company's
9 contractual obligations. We will brief it, Judge. But I'm
10 telling you it's there in the contracts. We walked through
11 some of it now. We'll put it very clearly, but that company
12 had a contractual obligation to pay it and he was well
13 within his authority as CEO of the company to fulfill that
14 contractual obligation. Now, it's \$10 million.

15 THE COURT: That's where I disagree. That's where
16 you've got to persuade me on that and Mr. Hurley's --

17 MR. FREEDMAN: Okay.

18 THE COURT: -- going to get a chance to respond to
19 that.

20 MR. FREEDMAN: We will do our best, Judge. I
21 understand. So, Judge, you know, I think that's the two
22 prongs of the authorization argument, right? So, these
23 transfers, I think you and I, Judge, have talked about this
24 and I think we've agreed, not that it matters what I agreed
25 to, but we've agreed nonetheless that there's a certain

1 point in time at which that the transactions, the transfers,
2 were without authorization. And the question is, what is
3 that date?

4 And so, now I'm talking about, well, when was that
5 authorization -- when do you find that line, and what was
6 the authority to transfer? And prong one is, well, Mr.
7 Mashinsky approved them and we've gone through that.

8 THE COURT: Look, I'm not sure that -- you know,
9 what is it that you think gives Mr. Mashinsky without, you
10 know, a board resolution to just do what he wants, say go
11 ahead, take the \$10 million? And I'm using that number as a
12 hypothetical. I'm just -- you know?

13 MR. FREEDMAN: I mean, Judge, I don't --

14 THE COURT: I don't think he would have the
15 authority to do that either.

16 MR. FREEDMAN: I'd have --

17 THE COURT: Without a piece of paper that
18 documents that it was done, without a board resolution that
19 says go ahead and do it, that -- you know, without a scrap
20 of paper -- I understand (indiscernible) early stages. The
21 fact of the matter is Mr. Stone took a back-up of his e-mail
22 files. He hasn't produced an e-mail. He hasn't produced a
23 WhatsApp from his phone or a text message from his phone.
24 There's no document that supports his having the authority
25 to -- having been given the authority.

1 Even -- you know, if there was a text message from
2 Mr. Mashinsky who said go ahead and do it, I'm not -- at
3 least he would have an argument perhaps that, well, I acted
4 in good faith on the statement from the CEO of the parent
5 company.

6 He doesn't -- he doesn't have that, okay? I don't
7 -- I don't know what the bylaws of Celsius, whether they --
8 you know, what was the extent of the authority, and the CEO
9 just said go ahead and take it, go ahead and take the
10 million dollars.

11 MR. FREEDMAN: I mean, Judge, neither do I, and
12 neither did Mr. Stone. And I don't think that's his
13 obligation. If the CEO of a company tells you you are
14 permitted to take this, you can rely on that in good faith.
15 I mean, that -- I think that's non-controversial.

16 THE COURT: You think so? You really think --

17 MR. FREEDMAN: I think so. If you -- if you have
18 a contract with a company, a company that's managing assets
19 over \$20 billion, to which you've deployed \$1.4 billion
20 worth of assets to under the authority of Mr. Mashinsky, and
21 you say to him, hey, I've made all this profit. Can I take,
22 you know, X amount of dollars, and he says yes, I mean,
23 that's a -- look, \$10 million is a lot of money, Judge, but
24 for Celsius at the time it was nothing. It was nothing, and
25 probably the board wouldn't have wanted to be even bothered

1 with it. I don't know. We'd have to check that the
2 documents, but I don't think it'd be fair to fault Mr. Stone
3 for relying on the CEO's authorization.

4 Also Judge, you know, there's one more thing.
5 This is a preliminary injunction. We're not here on the
6 merits, right? Like every conversion claim -- every
7 conversion claim doesn't get accompanied with a preliminary
8 injunction. Like, maybe they have a good claim.

9 THE COURT: Mr. Freedman, my concern is I was --
10 just put it this way. I was distressed to hear that
11 \$100,000 or so was transferred out yesterday or the day
12 before.

13 MR. FREEDMAN: Well, let --

14 THE COURT: Okay? One thing --

15 MR. FREEDMAN: -- I've been waiting to address
16 that.

17 THE COURT: Hold on. I'm going to say it now,
18 okay? And Mr. Hurley -- you and Mr. Hurley can work on the
19 terms of the written order, but I'm so ordering the
20 transcript that Stone and KeyFi are not authorized absent
21 further court approval to make any further transfers, okay?

22 I don't want to find out, but oh, Judge, you know,
23 there was nothing in place while you were considering it.
24 We're doing some further briefing. I don't want to find out
25 that he's transferred beyond the reach of the Court because

1 it can't be traced, however much money, okay?

2 I believe -- I'm not deciding the -- call it a
3 TRO, okay? I believe that at this stage pending a decision
4 on the preliminary injunction that the plaintiffs have shown
5 a substantial likelihood of prevailing on the merits and are
6 entitled to a temporary restraining order restraining the
7 defendants from transferring any other assets away.

8 I don't want to find out, you know, your -- I'm
9 going to ask you -- both of you when you're going to submit
10 your additional briefs, fine, and I'll allow you
11 (indiscernible) agree on that. Okay? These are important
12 issues, but I don't want to find out that, you know, more
13 money was siphoned away while you were all doing your
14 briefing.

15 So, I'm making it crystal clear now what I want
16 you and Mr. Hurley to do is agree on the terms of the
17 written order. It's a temporary restraining order. It will
18 remain in place until the Court has decided the preliminary
19 injunction motion, and it's to prevent exactly what I just
20 said. I don't want -- maybe you're ultimately going to --
21 you'll prevail in the preliminary injunction, but I don't
22 want to find out that while I'm waiting for these additional
23 briefs, Mr. Stone has, you know, transferred additional
24 funds away. It's just -- I don't want that to happen.

25 MR. FREEDMAN: So, understood, Judge. A couple of

1 things. To the extent it's required, I don't have the law
2 on my fingertips. Obviously, the order is the order and we
3 will abide by it, but we object to it. But I understand
4 your order, and we will abide by it.

5 THE COURT: Well, fine, you can object to it. You
6 can -- if you think you can appeal, you can do what you
7 want. But I don't --

8 MR. FREEDMAN: Judge, I don't --

9 THE COURT: -- want to see more money bleeding
10 away while you get to submit additional briefs, okay?
11 That's what I'm making crystal clear.

12 MR. FREEDMAN: I understand, Judge. I don't know
13 what our rights are. I just don't ever want to be accused
14 of waiving it by not saying something, and that's why I'm
15 just preserving.

16 Judge, I do want to say that it was -- it is very
17 clear Mr. Hurley admitted there was no such restriction,
18 there was no order violated, and to be very clear, and I
19 just want to say, Judge, to be very clear, my law firm has
20 custody of that -- of those tokens, the stable tokens, and
21 we have not touched them pending a decision on this motion,
22 and if the Court orders them returned, they will be returned
23 immediately.

24 THE COURT: I'm not --

25 MR. FREEDMAN: So, I don't want -- that shouldn't

1 --

2 THE COURT: Mr. Hurley very upfront that there was
3 no restriction in place. I understand that, but I don't
4 want to find out --

5 MR. FREEDMAN: Understood.

6 THE COURT: -- while I'm deciding this, a
7 substantial amount of value funds have been bled away and
8 can't be recovered. I just -- that's not going to happen.

9 MR. FREEDMAN: Understood, Judge. So, we will
10 work with Mr. Hurley to get that in place.

11 Judge, with that, I would like to turn to the
12 balance of the hardships because they need to -- they need
13 to show the balance of the hardships.

14 So, look, I think we've covered that we don't
15 believe they've fulfilled their burden, although I would not
16 contest that they have raised sufficiently serious questions
17 going to the merits to make them a fair ground for
18 litigation.

19 I think we concede they've made that showing,
20 Judge, but that's not enough. To get the injunction, they
21 also have to show that the balance of hardships falls
22 decidedly in their favor, not in their favor, decidedly in
23 the favor.

24 Judge, they cannot do that. Celsius has no
25 argument that absent an injunction it's going to suffer any

1 significant hardship. It can afford to pursue its claims.
2 The estate is sitting on billions of dollars in assets. If
3 it prevails, it --

4 THE COURT: How about to the unsecured creditors?

5 MR. FREEDMAN: Okay, Judge, I know that Celsius
6 has already paid Mr. Hurley's firm over \$1.5 million worth
7 of legal fees, so clearly they're not having an issue
8 affording this case. So -- and if it does prevail, it can
9 enforce the judgment against defendants like all plaintiffs
10 can enforce it against defendants.

11 So, defendants have to show that there's a real
12 reason to suspect that there will be some kind of
13 dissipation of assets or that the assets will be dissipated
14 beyond the expenditure of attorney fees. We'll discuss with
15 the Court. And quite frankly, Judge, that claim is absurd.

16 First of all, to be clear, the addresses and
17 assets that Celsius is desperately seeking to enjoin are a
18 few million dollars in assets with certain tokens and NFTs.
19 To preserve a few million dollars' worth of assets, Celsius
20 has expended likely more than those assets are even worth,
21 because there's -- \$1.5 million has been spent on this
22 litigation before the preliminary injunction has been filed
23 by Mr. Hurley's firm, the expedited discovery was
24 undertaken, this hearing was prepared for and attended.
25 You've got to imagine if they're at 1.5 then, they're way

1 over that now.

2 Celsius could have preserved these assets by
3 simply agreeing to some kind of limited injunction. The
4 assets haven't moved from that account for 10 months with
5 the exception of this \$100,000 in attorney's fees. Mr. --
6 the defendant has cooperated with an accounting and prepared
7 an audit and a spreadsheet and sat for deposition. This is
8 insanity, right? Like, in terms of a -- the benefit of the
9 hardships -- the balance of the hardships here, Celsius is
10 sitting on an insane amount of money and expending an absurd
11 amount of money more than the assets are worth to enjoin
12 them.

13 It's -- it doesn't -- we haven't even gotten to
14 the merits. So, in terms of the balance of hardships, this
15 is -- this is the 2,000 pound gorilla. This is the true
16 David and Goliath, right? I mean, there's no -- there's no
17 comparison, and defendants will face substantial harm if
18 this injunction is entered. The Court's TRO is already
19 going to create substantial harm because these are the sole
20 assets of the defendant KeyFi.

21 And in its opening -- in his opening -- and sorry,
22 and an injunction will prevent KeyFi from defending itself
23 while Celsius continues to exert the full force of a
24 veritable army of lawyers. That's not fair, right?

25 The defendant will not be able to defend himself

1 and the plaintiffs have a nearly unlimited source of
2 resources to burn an insane amount disproportionate to
3 what's at stake in the case.

4 Now, Judge, in opening Mr. Hurley stated that he's
5 aware of no case where a defendant accused of wrongfully
6 taking assets can use those assets to defend himself. We
7 found them.

8 Adelphia Communications Corp. v. Rigas. The Court
9 noted in passing that the TRO previously entered contained
10 an exclusion for legal fees, 2003 W.L. 21297258.

11 THE COURT: Yeah, but that was by agreement.

12 MR. FREEDMAN: I'd have to look it up, Judge. In
13 Trepel v. Dippold, the Court directed the parties to craft
14 an order that would restrain assets other than those
15 necessary for legal fees, 2006 W.L. 3054336.

16 You know, we did this research quickly, but we're
17 happy to do more for post --

18 THE COURT: (Indiscernible) context often. Yes,
19 Mr. Hurley is correct. In some of the cases, Courts have
20 ruled no, no money for the defense, and in other cases there
21 have been agreements worked out, carve-outs, dollar limits,
22 et cetera. I am familiar with that.

23 MR. FREEDMAN: Okay. So, Judge, the other thing
24 is that in addition to the fact that enjoining these assets
25 will prevent the defendant from defending himself, and it's

1 truly disproportionate what would then happen, there's also
2 the fact that these assets haven't moved for 10 months
3 within this wallet and they are profitably deployed, meaning
4 Mr. Stone is managing these funds within this wallet,
5 earning profit every single day on that wallet.

6 That income on those assets will stop if this
7 Court enjoins all those assets and that's not fair to the
8 defendants either.

9 THE COURT: Which wallet is it in?

10 MR. FREEDMAN: And to be --

11 THE COURT: What's the --

12 MR. FREEDMAN: Judge, one second. I don't
13 remember. It's the wallet ending in OX-50, Judge --
14 beginning in OX-50 rather.

15 So, Judge, given that Celsius faces almost no
16 hardship from the lack of an injunction than any other
17 litigant would face, the fact that they can't really show
18 irreparable harm -- I'm going to get to that in a minute,
19 which is because they can't show an intent to dissipate the
20 assets, and that the defendant and the rest at issue would
21 both be harmed by the injunction, the factor of the balance
22 of hardships tips decidedly in the defendant's favor,
23 decidedly.

24 And Judge, that brings me to the last prong, which
25 is irreparable harm. The undisputed testimony is that these

1 assets have been primarily segregated by defendants into the
2 OX-50 wallet. It's in my notes, Judge. I should have seen
3 it, and related addresses to OX-50. There might be a few.
4 We've identified them to Mr. Hurley where they continue to
5 be put at work within the cryptocurrency sphere generating
6 income. Indeed --

7 THE COURT: Are you -- let me ask this. Are you
8 able to give me the approximate current value, you know,
9 within the last week or something like that of the assets
10 that were in the wallet?

11 MR. FREEDMAN: Can I have one moment, Judge?

12 THE COURT: Please. Go ahead.

13 MR. FREEDMAN: Judge, I'm told that it's about
14 \$3.5 million, and then there's one particular NFT that is
15 very difficult to determine its value but may be very
16 valuable. It's unclear what that value is. It could be
17 millions. It could be hundreds of thousands, and so I don't
18 want to try to put a value on it.

19 THE COURT: And those are the only places where
20 the -- where assets are found now is the OX-50 wallet and
21 this one FT?

22 MR. FREEDMAN: One second, Judge. Judge,
23 obviously we've talked about the fact that my law firm has
24 custody over that \$100,000 and my firm also has custody over
25 that NFT.

1 THE COURT: Okay.

2 MR. FREEDMAN: Judge, when I say the OX-50 wallet,
3 I think we had discussions about like, you know, parent
4 wallets or I forgot exactly what they're called and related
5 wallets, so there are related wallets to the OX-50 wallet
6 but they've been identified to Mr. Hurley, and I think the
7 total -- it's about \$3-and-a-half million in those assets
8 plus the NFT.

9 THE COURT: Okay.

10 MR. FREEDMAN: Judge, the plaintiffs have failed
11 to demonstrate any evidence of a dissipation of assets from
12 those addresses over the last 10 months, and the only
13 testimony for Mr. Stone was that the first time he sent
14 assets out of that account was recently to pay for counsel
15 fees.

16 I think we've addressed that, Judge. We're
17 holding it. We'll return it if the Court orders it,
18 although again, it will put the defendants at a major
19 disadvantage.

20 Now, Judge, defendant -- I want to -- I want to
21 keep going on this irreparable harm point. The defendants
22 voluntarily provided a substantial accounting of these
23 assets and their originating transactions, all while
24 preparing for this hearing. It would make no sense for the
25 defendants to engage in all of this accounting work and to

1 do so much of the plaintiff's job for them if defendants
2 intended to abscond with these assets, all of which can be
3 seen on the blockchain.

4 And while there's talk about Tornado Cash, Judge,
5 obviously that has not been touched since OFAC sanctioned
6 it, but even before then you have to understand that, you
7 know, it's very easy to say oh, Tornado Cash, it's nefarious
8 because a lot of bad people use it, but there's a perfectly
9 legitimate purpose to using Tornado Cash.

10 When you're in a highly visible wallet like the
11 OXB-1 wallet where everybody was watching, they track all
12 transfers out of there, and as the Court knows, the
13 blockchain is fully public. So, if you're using
14 cryptocurrency the way Mr. Stone does because he lives in
15 this world, that's kind of like your bank account in some
16 ways, and if they can trace those funds, they're going to
17 know what you're doing with them.

18 The only way to get privacy back is to go through
19 something like Tornado Cash. So, you know, Mr. Hurley
20 screams up one side and down the other Tornado Cash, Tornado
21 Cash, Tornado Cash, OFAC sanction, well, that doesn't mean
22 it was used for an improper purpose.

23 You know, there's a lot of things that can be used
24 for good and bad, and so the fact that Tornado Cash was
25 utilized isn't really a problem, but to be clear, it hasn't

1 been used in, I don't know, more than 10 months because
2 nothing has been dissipated.

3 So, Judge, moreover, the defendants have indicated
4 that they -- the sole use they plan to use these assets for
5 during the next few months is to defend themselves, and
6 plaintiffs who have spent millions of dollars and likely
7 more than those assets are worth pursuing these claims can't
8 be heard to complain that the defendants also want to spend
9 some assets that the estate might have a claim to, to defend
10 themselves when it's in their property.

11 And finally, Judge, I want to address something.
12 You said yesterday you rejected the idea that the injunction
13 was brought too late. I understand as a legal matter, no
14 problem, that is not going to be the basis to deny it. But
15 it is telling, right? It's telling as to Celsius' true
16 belief are these assets really at issue of fleeing the
17 jurisdiction, because they waited a year and a half to bring
18 this injunction, and also Judge, if that's the case, you
19 know, if they believe that this actor is so bad, then an
20 injunction is not going to matter anyways, right?

21 Like, obviously this is an actor who's going to
22 respect the authority of the Court, has respected the
23 authority of the Court, has been up in that stand answering
24 questions truthfully about his conduct, has not dissipated
25 assets for 10 months, has cooperated in tracing all the

1 assets so that a Court can adjudicate who gets to keep them.
2 This is not someone who's going to dissipate assets.

3 And they need to show irreparable harm, right?

4 This is a preliminary injunction. They don't get to throw a
5 lot of, you know, stuff at the wall, say Mr. Stone's a bad
6 person, and then enjoin his assets. That's not how
7 preliminary injunctions work in this country. This is not
8 the United Kingdom. We don't believe in Mareva injunctions.
9 We don't allow pre-judgment attachments, and you have to
10 make a very significant showing to freeze assets, and they
11 haven't done it. They can't show an irreparable harm.

12 And Judge, I want to close on one thing. The fact
13 is we -- the defendants would not have a problem consenting
14 to an order that while the defendant can manage the funds
15 within the OX-50-related wallets to deploy them profitably
16 and continue earning yield, they -- and use those funds to
17 pay for defense counsel, and we can talk to the Court and
18 defense counsel about, you know, how much those fees are.
19 Obviously the more that -- the more that the plaintiffs
20 push, the more defendants have to defend, but we would not
21 have a problem -- defendants don't have a problem consenting
22 to an order that while the defendants are allowed to manage
23 the funds within the OX-50 wallet and pay for counsel fees
24 with it, they won't otherwise transfer the assets out of the
25 OX-50-related wallet, so they will keep them in that

1 universe until the Court resolves this dispute. We just
2 want to be able to continue earning -- putting those funds
3 to good use while it's happening and to pay counsel fees
4 from them.

5 And otherwise, look, I think the Court was able to
6 observe Mr. Stone yesterday at one point, you know, told Mr.
7 Hurley no, he's answering your questions. He is here, he is
8 present, he is cooperating with this process. He's being
9 transparent and open about it. He's not fleeing this
10 jurisdiction. He's not utilizing Tornado Cash. He's not
11 dissipating assets and he's happy to consent to that sort of
12 an injunction, which says keep all the assets here. You can
13 manage them so you can move them into different protocols
14 and try to earn yield on them, but you can't take them out
15 of your wallet, out of your control and authority of your
16 wallet, except to pay for counsel.

17 And so, Judge, on that I would conclude that they
18 can't show likelihood of success on the merits because Mr.
19 Mashinsky approved it, or alternate -- at least they can't
20 show a sufficient -- sorry, they can't show a likelihood of
21 success on the merits because there's a real disputed issue
22 over whether Mr. Mashinsky approved it.

23 They can't show likelihood of success on the
24 merits because, as I just -- we will brief this, Judge. The
25 contracts vested Mr. Stone with the obligation to make the

1 payments that he actually made.

2 And Judge, when you look at the fact that yes,
3 they did raise sufficiently serious questions, the balance
4 of hardships tips decidedly in our favor. Quite frankly,
5 this frolic is insanity. I mean, the assets of the estate
6 are being squandered to go after a tiny amount of money.
7 It's absurd, and frankly, Judge, irreparable harm can't be
8 shown because there's been no indication to abscond with the
9 assets. There's been no indication to dissipate the assets.
10 And in fact, the defendants were sitting here offering to
11 enter into an injunction voluntarily that keeps the assets
12 within those wallets and allows them to pay for attorneys'
13 fees and otherwise deploy capital.

14 So, with that, Judge, we'd ask that that you enter
15 that form of order that we can work with Mr. Hurley on and
16 otherwise deny the preliminary injunction order.

17 THE COURT: Mr. Freedman, I've got so many
18 documents sitting in front of me. Where is that audit
19 provision? Which agreement is the audit provision in?

20 MR. FREEDMAN: The audit provision is --

21 THE COURT: The APA or the (indiscernible)
22 agreement?

23 MR. FREEDMAN: It's in the APA, Judge.

24 THE COURT: What section?

25 MR. FREEDMAN: And it is -- it's PX 40, Judge, at

1 Page 16.

2 THE COURT: Yeah, I have PX 40 open. What
3 paragraph is that in?

4 MR. FREEDMAN: It's Page 16. I've got the
5 Romanette I, but is it -- do you have it in front of you,
6 Mr. Stone? It's like -- if I remember, Judge, it's like the
7 bottom of the page.

8 THE COURT: I got it. It is Page 16. It's
9 Romanette 5, 7.4, Romanette 5.

10 MR. FREEDMAN: Sorry, Judge.

11 THE COURT: 7.4B, Romanette 5 on Page 16. Just
12 bear -- I just want to look at it again.

13 It's actually -- it's 7.4B. It covers more than
14 just Romanette 5, 7 point -- Pages 15 and 16.

15 MR. FREEDMAN: Yeah, I think the specific portion
16 we point to, Judge, is the one that says within the later to
17 occur of 14 calendar days --

18 THE COURT: Yeah, that's Romanette I, 7.4
19 (indiscernible).

20 MR. FREEDMAN: Judge, I don't have the agreement
21 in front of me. I'm being told it's obviously much more
22 detailed than that and it goes -- it goes on, and you have
23 it in front of you.

24 THE COURT: Yeah, it goes on. There's five
25 Romanettes under 7.4B.

1 All right, thank you, Mr. Freedman.

2 MR. FREEDMAN: Thank you, Judge.

3 THE COURT: Mr. Hurley?

4 MR. HURLEY: Again for the record, Your Honor,
5 Mitch Hurley with Akin Gump Strauss Hauer and Feld on behalf
6 of the plaintiffs. I'm not going to spend a lot of time
7 here, Your Honor. I know there's going to be some
8 additional briefing. I just want to make sure I go through
9 and correct some of the comments that you heard just a
10 moment ago.

11 So, I'm going to start with -- and I'm sure this
12 is clear to Your Honor, but just because Mr. Freedman
13 misstated what I said, I want to make it crystal clear
14 again. He said Mr. Hurley claims the authorization ended on
15 March 9th. The plaintiff's argument is there never was any
16 authorization. I want to make that crystal clear for the
17 record.

18 He pointed Your Honor to a letter that I sent to
19 former counsel for Mr. Stone, and in fact early in the case
20 Mr. Stone had identified -- he had claimed that he had
21 terminated his employment in March. We asked for any
22 evidence of that, and at first they didn't provide us with
23 that March 9th e-mail. They later did.

24 In Mr. Stone's affidavit in this case, Your Honor,
25 he identifies March as the time when he indicated he was

1 going to resign. He didn't say anything about a twilight
2 period in the affidavit.

3 Throughout this case, his position has always been
4 that he resigned on March 9th. He specifically argued he
5 wasn't required to follow board resolutions because he
6 resigned on March 9th, but you don't have to take my word
7 for it, Your Honor. I want to direct you to the PTO, pre-
8 trial order. Can you pull that up, please?

9 MAN 2: Sure. Deanna, could you put Frank as a
10 co-host, please?

11 MR. HURLEY: And this is from the stipulated facts
12 that the parties agreed to in advance of this case, Your
13 Honor.

14 CLERK: Sorry, what's the name of the person that
15 needs co-host?

16 MAN 2: Frank (indiscernible).

17 MR. HURLEY: Just give me the PTO. I'll just read
18 it. Put it on her computer. This is from Paragraph 34 of
19 the stipulated facts.

20 CLERK: All right. He's co-host.

21 THE COURT: He's now the co-host so he can put it
22 up there if he wants, but go ahead, Mr. Hurley.

23 MR. HURLEY: Stipulated facts, Your Honor,
24 Paragraph 34. By e-mail dated March 9, 2021, Stone notified
25 Celsius that he was planning to start his own investment

1 management company, which he said he had named OX
2 Management. Stone contends that the March 9th e-mail
3 constituted notice to Celsius of his resignation of CEO of
4 Celsius KeyFi.

5 THE COURT: Okay.

6 MR. HURLEY: You'll recall I showed Mr. Stone that
7 letter and he acknowledged it as his -- the letter that he
8 was referring to in his affidavit and he --

9 THE COURT: Take down the share screen so I can
10 see Mr. Hurley.

11 MR. HURLEY: And I believe the transfer was going
12 to -- is going to show that he continually acknowledged it
13 and recognized March 9th as his resignation date, just as he
14 contends -- it says he contends in the agreed, stipulated
15 facts in this case. Okay.

16 THE COURT: Well, let me just -- I'm going to stop
17 you there while you're looking for your next point. I want
18 -- and I know you say all of the transfers were unauthorized
19 but I want in a supplement filing a breakdown of the pre-
20 March 9, post March 9 transfers, okay?

21 MR. HURLEY: We'll provide details.

22 THE COURT: Okay. Go ahead.

23 MR. HURLEY: I mean, I should say we'll provide
24 the details we can based on the information that's been
25 provided to us by the defendants. Okay. There was a

1 question about the OXB-1 wallet, Your Honor, and Mr.

2 Freedman said that's a Celsius KeyFi wallet.

3 Your Honor, Celsius KeyFi was formed pursuant to a
4 document that was signed by Mr. Stone himself on January 11,
5 2021. Mr. Stone testified that Celsius gave him access to
6 the OXB-1 wallet I think he said the day after he started,
7 which would have been August 18, 2020. The OXB-1 wallet,
8 sir, was created by Celsius. Celsius had the pass keys. It
9 was a Celsius wallet and we know that because Celsius KeyFi
10 didn't even exist when that wallet was created.

11 THE COURT: (Indiscernible) to me is an important
12 thing. I'm going back -- I'm looking at my notes from Mr.
13 Freedman's presentation. (Indiscernible). What is the
14 evidence that shows the OXB-1 wallet was a Celsius wallet
15 and not a Celsius KeyFi wallet?

16 MR. HURLEY: Piece of evidence number one, Your
17 Honor, is that it was created and it's undisputed it was
18 created before Celsius KeyFi existed. It was created by the
19 Celsius -- by Celsius Network.

20 In Mr. Stone's sworn affidavit, he has an initial
21 cap defined terms Celsius Wallets, and I asked him what he
22 meant by that, and in his deposition he testified, and I
23 believe we did this actually at the trial yesterday as well,
24 that he was referring to wallets created by Celsius using
25 the OXB-1 seed and a 43D seed. So, wallets created by

1 Celsius. He himself defines the OXB-1 wallet as a Celsius
2 wallet.

3 THE COURT: Put that in a -- in a post-hearing --

4 MR. HURLEY: Absolutely, Your Honor. Okay. And
5 that brings me to this claim that's being made about the
6 airdrop in the OXB-1 wallet in September of 2021. You were
7 correct in your recollection of the testimony yesterday,
8 Your Honor. In fact, Mr. Stone testified at his deposition
9 and again we refreshed him yesterday very clearly that it
10 was the OXB-1 wallet that suffered harm as a result of the
11 hack that occurred in November of 2020.

12 He then claims that he did some work to try to get
13 compensation for that hack, which he says was deposited in
14 the OXB-1 wallet, and he then went in and took the
15 compensation that was being provided, and this was very
16 clear in his deposition, we'll definitely cite this in our
17 post-trial briefing, Your Honor, he was very clear in his
18 deposition that that was meant to compensate OXB-1 for the
19 harm that it suffered and that he went in and took it.

20 I just want to very quickly -- it's a small point
21 but in terms of turning over the e-mails to Mr. Stone, what
22 we said to them was even if we had all the time in the
23 world, you don't just turn over an entire e-mail file. We'd
24 have to do a review for privilege, other things, and you
25 know, so -- and we said we'll do that in plenary discovery.

1 We just can't do it in a week, because they didn't ask us
2 for that until after our expedited discovery process was far
3 underway.

4 You heard some comments about -- well, you know
5 what? I'm going to skip that.

6 THE COURT: I do want you to --

7 MR. HURLEY: I want to come right to the APA.

8 THE COURT: Hold on. I want you to address the
9 point that Mr. Freedman made that general ledger DX 34, Line
10 67, which showed the 10 percent accrual for KeyFi revenue
11 share. Could you address that?

12 MR. HURLEY: I can, and the main way I'm going to
13 address it, Your Honor, is that no foundation was ever laid
14 for that document. No witness that was on the stand today -
15 -

16 THE COURT: It's in evidence. It's in evidence.
17 I overruled your objection.

18 MR. HURLEY: It is in evidence. It's in evidence.
19 I'm not arguing it's not, but no witness that was on the
20 stand was able to even identify it as the general ledger.
21 And I told you honest -- you asked me if it is. I don't
22 know whether it's the general ledger, and the defendants had
23 that document through the expedited discovery since December
24 15th or whatever, and they had time to say hey, we need a
25 custodian of records because this is a really important

1 document and we need to find out what it is so we can have a
2 competent witness tell the judge what it is. But they
3 didn't do that.

4 THE COURT: Okay. Go ahead.

5 MR. HURLEY: Instead, they put it in front of two
6 witnesses that said I don't know what this document is.

7 THE COURT: Go ahead.

8 MR. HURLEY: Okay. Let me talk about the APA for
9 a minute, because you heard a lot from Mr. Freedman about
10 the APA and I want to make sure that we're understanding
11 what that document actually says and doesn't say.

12 So, first he pointed you to Section 3.1 of the
13 APA, and I want to look at that again with Your Honor, and
14 he pointed you specifically --

15 THE COURT: Right, I have it open in front of me.
16 Go ahead.

17 MR. HURLEY: Sure.

18 THE COURT: The paragraph on purchase price and
19 payment.

20 MR. HURLEY: Correct, 3.1C.

21 THE COURT: Right.

22 MR. HURLEY: And he refers to the earn-out
23 payment. There's a few things you should be aware of about
24 this provision, Your Honor. First of all, earn-out payment
25 is initial caps, looks like it's a defined term. Do you see

1 that?

2 THE COURT: Yes.

3 MR. HURLEY: But that term is not actually defined
4 anywhere in the document, and it's not defined anywhere in
5 the services agreement. There is a reference to the service
6 agreement with respect to how a profit share would be
7 calculated. Of course, we acknowledge that. But as I said
8 before, Your Honor, just because a document contemplates
9 that there could be a profit payment doesn't mean there will
10 be. You actually have to demonstrate that profits were
11 earned.

12 And if you can demonstrate that profits were
13 earned then you have a calculation, and that never happened.
14 I mean, that's undisputed. There was never a P&L that was
15 created, and --

16 THE COURT: Let me ask you this. Do you agree
17 that Mr. Stone had the right under the APA to demand an
18 accounting?

19 MR. HURLEY: The APA provides that KeyFi can
20 demand an accounting, but I want to make really clear
21 exactly what it provides, and if I could just start with a
22 couple other provisions? I think we'll lead straight to
23 that point, Your Honor.

24 So, first, you heard Mr. Freedman saying that
25 Jason Stone had the right as the CEO of Celsius KeyFi to

1 just start paying himself money if he wanted to. I think
2 Your Honor's right. There's absolutely zero support for
3 that anywhere in the law, but it's also contrary to what the
4 contract actually says.

5 So, if you'd look at the services agreement -- I
6 got it. If you look at the services agreement, and that is
7 plaintiff's Exhibit 41.

8 THE COURT: I have it open in front of me. It's
9 41. (Indiscernible).

10 MR. HURLEY: So, I want to direct your attention
11 to Paragraphs 3 and 4, which are actually about services and
12 compensation for services.

13 THE COURT: Yes, I'm there.

14 MR. HURLEY: So -- and again, it's really
15 important to remember that here, KeyFi means Celsius KeyFi
16 and Celsius is Celsius Network.

17 Okay. So, in Paragraph 3, this provides very
18 clearly with respect to such services, all coins deployed by
19 KeyFi, Celsius KeyFi, and revenues generated and/or received
20 from the third parties shall be owned by and paid to Celsius
21 or an affiliate of Celsius as determined by Celsius
22 excluding KeyFi.

23 Okay. And then under compensation, it provides as
24 a sole and exclusive compensation for the services, Celsius
25 not the company his client was the CEO of but Celsius

1 Network, shall pay Celsius KeyFi the consideration set forth
2 in Schedule B. Celsius KeyFi didn't even have the right to
3 pay the compensation, much less the CEO acting on his own.

4 Okay. Concerning the audit provisions in the APA,
5 and this I think is important.

6 THE COURT: That's an important point. I want you
7 to make sure that you include it in the supplemental filing,
8 okay?

9 MR. HURLEY: I will, Your Honor.

10 THE COURT: It doesn't have to be lengthy, but I -
11 - go ahead.

12 MR. HURLEY: So, let's look at 7.4B, the audit
13 provision again, and just remembering, Your Honor, as I know
14 you do, that the service agreement required Mr. Stone as CEO
15 of Celsius KeyFi to do the P&L and I argued, yeah, that
16 makes sense because who else is going to do the P&L? He's
17 the one who's doing the investing.

18 If you look at 7.4 -- it's B and then there's a
19 second Romanette I, right, and it provides this audit
20 obligation, and it says that if seller is dissatisfied with
21 the payment or if non-payment occurs, seller may invoke the
22 audit.

23 And you'll see that the party that's supposed to
24 respond to the audit is buyer. Buyer is Celsius KeyFi.
25 That's the company that Mr. Stone was the CEO of. And

1 again, it makes sense under the circumstances that if there
2 was going to be an audit, it would be carried out by the
3 parties that actually were doing the investing, which was
4 Mr. Stone as the CEO of Celsius KeyFi.

5 So, for him to come to us after he's walked away,
6 and we're saying, hey, we don't have enough information to
7 know what you did, you never delivered the wormhole that we
8 needed as you admit to build the P&L. We need information
9 from you to understand what you did, and his response to us
10 is we want an audit from you. It doesn't make any sense,
11 Your Honor.

12 THE COURT: Well, it doesn't -- the obligation
13 would survive his resignation as chair -- CEO of Celsius
14 KeyFi.

15 MR. HURLEY: Well, Celsius KeyFi effectively was
16 Jason Stone and the five or six people that he split that
17 money up with in September. So, as a practical matter for
18 him to tell us that he wants an audit done of the activities
19 of the company he ran with respect to a P&L that he never
20 created with respect to activities, by the way, that he
21 undertook while he was there, it's -- I don't -- how are we
22 supposed to do that?

23 And Your Honor, I would also add that the audit
24 request --

25 THE COURT: Look, I'm sorry, Mr. Hurley. Mr.

1 Hurley, if the contract included a profit share, you can't
2 tell me that that right went away because he resigned.

3 MR. HURLEY: I'm not saying that. I'm absolutely
4 to saying that.

5 THE COURT: He was still owed it by Celsius, and
6 if he wanted to demand it -- an accounting, there should
7 have been an accounting. Why didn't -- why wasn't that
8 contract provision breached when he asked for an accounting
9 and none was done?

10 MR. HURLEY: We're absolutely not suggesting that
11 if there were profits, they would be shared. We are
12 suggesting there absolutely were not profit from the massive
13 losses. And to answer your question, they asked --

14 THE COURT: Well, but nobody -- you -- Mr. Stone's
15 lawyers put on evidence yesterday without ever quantifying
16 what the profits were that Mashinsky believed and others at
17 the company believed there were profits, okay? And you take
18 the position that there never were profits. I don't know
19 whether there were or there weren't. If there were and the
20 contract said there was a right to an accounting and it's
21 not been provided, why hasn't there been a breach? Why
22 shouldn't there be -- I mean, I raised this question at a --
23 you know, one of the conferences we had. Have you tried to
24 agree on an accountant to do an accounting, figure out
25 whether --

1 MR. HURLEY: So --

2 THE COURT: You say it's hard. Figure out whether
3 there were profits or not.

4 MR. HURLEY: Let me unpack that one thing at a
5 time.

6 THE COURT: I feel strongly he had no right to
7 self-help, but that's a separate issue.

8 MR. HURLEY: Right. Yeah. Let me unpack that one
9 thing at a time. First of all, to be fair, what the
10 testimony was is that Mashinsky believed at a period of time
11 that there were profits, and I think it came out very
12 clearly that all of that was based on exactly what you're
13 asking to be -- to believe now, which is Mr. Stone claiming
14 there were profits. No proof was ever provided, P&L never
15 produced. Okay.

16 THE COURT: Well, Mr. Nolan thought there were
17 profits, too. Never quantified it.

18 MR. HURLEY: He said -- Mr. Nolan was crystal
19 clear that his only basis for ever believing that was Mr.
20 Stone, and he was crystal clear he never got any evidence
21 for Mr. Stone that it was true, so.

22 THE COURT: So, you're saying Mashinsky acted
23 improperly in transferring hundreds of millions of dollars,
24 maybe a billion dollars, in assets to Celsius KeyFi to
25 deploy without knowing whether they were making any money or

1 not?

2 MR. HURLEY: Look, I'm sure I think in hindsight
3 no one would deny that it turned out not to be a good idea
4 to give Mr. Stone the assets that he was given. That's
5 certainly true. About --

6 THE COURT: Well, I don't know whether that's true
7 or not. Until somebody has actually shown me where there
8 profits, were there not profits. I don't know.

9 MR. HURLEY: Sure. Yeah. But about your specific
10 audit question and why it's not a breach, I mean, the
11 defendants took the position in their papers, and I will
12 definitely point this out to you in our briefing, Your
13 Honor, that they made their first request for an audit in
14 September of 2021.

15 The audit was supposed to be requested I think
16 within 14 days of the date that they claim the profit was
17 due. They say the profit was due on December 20, 2021. So,
18 I mean, technically I don't actually think it's a breach of
19 contract, but I will tell you when they said we want to do
20 an audit, our response effectively was we need you to do the
21 audit. You're the ones that were doing the investing.
22 Let's try and share some information. It never -- it was
23 not a successful approach, because they kept just saying the
24 same thing back to us.

25 THE COURT: Okay. Go ahead.

1 MR. HURLEY: But again, I do think and I want to
2 come back to this, because I think it's really important. I
3 know Your Honor knows it, so if I'm trying your patience, I
4 apologize, but at the end of the day whether or not they
5 were -- whether or not they made a profit, and we think
6 we're going to be able to prove there was absolutely a
7 massive loss, but set that aside, they can't just go in and
8 take the money, and that's what they did.

9 And so, what we're saying is freeze it until Your
10 Honor has time to consider all these arguments that you've
11 heard. If they have merit, okay, all that's happened is for
12 a period of time they weren't able to keep spending the
13 money on who knows what? Mr. Stone does not know what he
14 spent the money on for, you know, many of these
15 transactions. So, that's really all that we're asking for,
16 Your Honor, and we think it is critical that that relief be
17 provided.

18 Okay. I think there were -- there was really one
19 other primary -- oh, I wanted to come back because you had
20 asked a specific question about transfers under \$50,000 and
21 my team took a look at that.

22 THE COURT: Right.

23 MR. HURLEY: And so, my understanding is that the
24 under \$50,000 individual transactions for the period January
25 11, '21 to March 9th, which is the period that the asset

1 purchase agreement was in effect, sums on a dollar value
2 basis, and again you have to remember dollar value is not
3 necessarily the relevant value, but on a dollar value basis
4 sums to \$390,000 total if you use the exchange rates that
5 were in effect as of the time of the actual transfers.

6 And oh, I also wanted to point one other thing
7 out, is that even those \$50,000 transfers, those are
8 actually -- it's clearer in the APA -- sorry, in the service
9 agreement itself that those are only paid by -- they are
10 deductions from profit sharing, so they actually get paid by
11 KeyFi ultimately if there's profit. If there's no profit,
12 then they're really not entitled to it at all.

13 Okay, and then finally on the TRO, we appreciate
14 that Your Honor brought this forward yourself. We certainly
15 were going to raise it. If there's going to be briefing,
16 we're going to make sure that the assets all stay in place
17 during the time of the briefing, and I'm sure we'll be able
18 to agree on some kind of reasonable briefing schedule.

19 But I just want to make crystal clear that I'm
20 understanding. The TRO was going to apply to transfers --
21 we'll address the property in a second but transfers for all
22 purposes, right? Because it seemed like I heard Mr.
23 Freedman sort of suggesting maybe they wanted to carve out
24 to pay their fees during the meantime. But --

25 THE COURT: No, it applies to all transfers.

1 MR. HURLEY: Applies to everything, okay.

2 THE COURT: And this is not going to be -- let me
3 make clear, this is only for the period it's going to take
4 me to get -- for me to decide, so both sides are going to
5 submit additional briefs. I don't -- it doesn't resolve the
6 issue, but I don't believe that the defendant's lawyers
7 should have to work without any expectation of being paid.
8 I'm very sensitive to -- and --

9 MR. HURLEY: Okay.

10 THE COURT: And I know -- I was getting some
11 feedback. I'm not sure where it's coming from. I know even
12 in the criminal context, you know, I've seen some of the
13 orders that -- years ago, I had seen some of the orders that
14 had been crafted in criminal cases where there was a budget
15 allowed for defense counsel, et cetera. So, I --

16 MR. HURLEY: Well, I think in criminal cases it's
17 more likely to be allowed. In civil cases it's less likely.

18 THE COURT: I understand (indiscernible). Yeah.
19 Okay.

20 MR. HURLEY: Right. And I would just point one
21 other thing out, Your Honor. I mean, there was evidence Mr.
22 Stone says he made 500,000 to a million-and-a-half dollars
23 on trading activities. There's no evidence that Mr. Stone
24 doesn't have money to pay his fees. He hasn't put any
25 evidence forward that he can't personally afford to do that.

1 The only claim was made with respect to KeyFi, Inc., which I
2 guess is sort of a shell company, but it's his company. So,
3 there's no evidence that he can't pay for it or that
4 Celsius' assets which we claim, and if we win we'll prove
5 were stolen, that he gets to use them to pay his fees, so.
6 But we'll So save that for the briefing, I suppose.

7 THE COURT: Let me ask you this.

8 MR. HURLEY: Mm-hmm.

9 THE COURT: It's -- one of the -- one of the
10 questions that's mulling around in my mind is what coins did
11 Celsius give to Stone and what coins did Stone return
12 Celsius?

13 I think I've seen somewhere that Celsius cited
14 that they've given them about \$2 billion and that 1.3
15 billion were returned. I think that comes from the
16 defendant's brief, which suggested there was no profit. I
17 gave them 2 billion and I got 1.3 billion back. There's
18 \$700 million dollars that evaporated.

19 And I don't remember testimony during the hearing
20 that anybody put in that's dealt with that.

21 MR. HURLEY: So, we can -- we can work on
22 providing you our best understanding of coins out and coins
23 in. I do think that characterizing it as dollars is
24 actually not the right way to characterize it, because in
25 our view, as I said, even if they returned dollar -- coins

1 worth less, they still could have earned a profit provided
2 that their investment activities were generating more coins.

3 THE COURT: So, look, you --

4 MR. HURLEY: Because --

5 THE COURT: -- you and Mr. Freedman obviously
6 disagreed today about whether Stone would get a profit share
7 based on appreciation and value of cryptocurrency. You say
8 no. They say yes.

9 MR. HURLEY: That is true, and we'll make our
10 contractual arguments on that point. Your Honor, in terms
11 of the property that's going to be subject to this temporary
12 order, I mean, from our perspective, it has to include at
13 least the property that's identified in the defendant's
14 spreadsheets. And again, it's temporary, but I don't think
15 it should be limited. I think --

16 THE COURT: Isn't it property in the OXB-1 wallet?

17 MR. HURLEY: I'm sorry, can you ask that again?

18 THE COURT: Is that property in the OXB-1 wallet?

19 MR. HURLEY: No, no, it's -- the OXB-1 wallet is a
20 Celsius wallet.

21 THE COURT: Okay, I'm sorry. The OX-50 wallet,
22 OX-50 wallet.

23 MR. HURLEY: Based on their spreadsheets, there
24 are several defendant wallets that have received transfers.
25 There's some question about where they went. What we're

1 asking is that the injunction cover at least all the
2 property that they identify as being transferred from
3 Celsius wallets temporarily.

4 Now, there may be some of that property that they
5 say, well, we don't have it anymore. If that's the case,
6 Your Honor, then there is no risk that they will be
7 violating the TRO because they can't transfer it any
8 further.

9 So, what we're looking for really is entry of the
10 order that we submitted, which is categorical, which at
11 least includes what they've identified. Now, it's possible
12 -- I'm not accusing them this -- of this necessarily, but
13 it's certainly possible that there's property that's within
14 the category that hasn't yet been identified, and we submit
15 that that property should also be subject to the order
16 temporarily until we can get through the briefing and get a
17 final decision from Your Honor.

18 THE COURT: All right. Try and -- I'm going to
19 want you to try and settle an order within the next few days
20 that deals with this period. I just -- look, I made it
21 clear I'm not accusing the defendants of doing this or their
22 counsel of doing this. I think Mr. Freedman was very clear
23 in -- you know, he said there's approximately \$3-and-a-half
24 million in the OX-50 wallet and there's one FT which is
25 difficult to value, 100,000.

1 The -- his firm has custody of the NFT and the
2 \$100,000 that he received in fees. So, I don't know whether
3 -- let me put it colloquially. I don't want to have egg on
4 my face because between today and when there's a decision
5 millions of dollars somehow disappeared.

6 MR. HURLEY: And my concern, Your Honor, with all
7 due respect to the defendants, is about confining the scope
8 of the injunction just to what they say they still have when
9 there's a lot of work that needs to be done to figure out
10 exactly what they took and exactly where it is.

11 And so, that's why I'm suggesting that for the
12 temporary injunction, at least, we ought to have the
13 categorical definition, because only they really know, and
14 it includes at least the material in the spreadsheet that
15 they've identified in the spreadsheet.

16 MR. FREEDMAN: Judge, may I be heard on this
17 issue?

18 THE COURT: You will in a minute after he's
19 finished.

20 MR. FREEDMAN: Thank you, Your Honor.

21 MR. HURLEY: Oh, actually that raises one other
22 issue. So, Mr. Freedman said that there was no evidence of
23 any transfers in the past 10 months by Mr. Stone, and
24 actually the Stone spreadsheet includes at least one
25 transfer that was made according to the spreadsheet in 2022.

1 There was some testimony about it. I think Mr. Stone looked
2 at it, and he wasn't quite sure whether it was a transfer
3 that he had made from the Celsius wallet to himself or if it
4 was some other kind of transfer, but there certainly was a
5 transfer on their spreadsheets, not just in the last 10
6 months but I think in the last two or three months. I can't
7 remember if it was September or December, but it was
8 definitely late 2022.

9 Anyway, with that, Your Honor, I will yield the
10 podium unless you have any questions.

11 THE COURT: Let me -- give me a second. Hold on.
12 Stay up there.

13 MR. HURLEY: Sure. Sure.

14 THE COURT: I think I tried to make this clear
15 that I need the coin-by-coin information rather than value
16 because of the fluctuations in value, price fluctuations at
17 the time of various valuations.

18 I really want to know how many -- which coins were
19 given, what dates, et cetera, what did you get back?

20 MR. HURLEY: Yeah, we can do that. Well, there's
21 a bit of a staffing shortage at Celsius these days, but we
22 will be able to put -- bring some information forward, Your
23 Honor, and we'll do our best to make it as complete as we
24 can.

25 THE COURT: Okay. I think you -- so, I did have

1 questions on the DAI -- you know, on the DAI. I think
2 you've addressed that.

3 MR. HURLEY: And so, just on the -- I'm looking at
4 the ETH transfer spreadsheet for instance, and it actually
5 looks like there are one, two, three, four, five, six,
6 seven, eight transfers that were made in August of 2022, one
7 made in September of -- and two made in September of 2022,
8 so within that 10-month time period that Mr. Freedman had
9 indicated he didn't think there were any transfers. Yeah,
10 that was ETH transfers. Yeah.

11 THE COURT: Okay. I think that's all I have for
12 now.

13 MR. HURLEY: Did you have other questions, Your
14 Honor?

15 THE COURT: No, I don't think so.

16 MR. HURLEY: Okay, thank you very much.

17 MR. FREEDMAN: Your Honor, we will look into --
18 we'll include the date of the last transfer from the OBX-1
19 wallet. My understanding is there was nothing in the last
20 10 months. We just looked at it now. There were some
21 transfers it appears for like \$100 or something like that or
22 \$200. I don't know sitting here today who they are. I
23 think the evidence came in as it came in. We will address
24 that. I just don't want to make any misrepresentations to
25 the Court. If I'm wrong, I was wrong, but certainly nothing

1 substantial has left the accounts.

2 THE COURT: Okay.

3 MR. FREEDMAN: That being said, Judge, there's
4 just two points I really want to make, which is Mr. Hurley
5 has spent an incredible amount of time on the likelihood of
6 success on the merits and serious questions prongs of the
7 preliminary injunction standard, and those are important
8 portions but that is not all that is required.

9 I came up here. I said the --

10 THE COURT: (Indiscernible) argument about that
11 while there's serious questions, the balance of hardships is
12 critical.

13 MR. FREEDMAN: Judge, what I would point out is I
14 came up here and told Mr. Hurley and told you in front of
15 Mr. Hurley that he could not show irreparable harm, and he
16 could not show the balance of hardship tips in his favor,
17 both of which are required elements of preliminary
18 injunction, and on rebuttal he came back up and said nothing
19 about it.

20 So, Judge, while we're here, I would say show
21 irreparable harm. He's still here. Give him an
22 opportunity. Argue irreparable harm. Argue the balance of
23 hardships because I heard nothing on it, and quite frankly I
24 don't think we'll hear anything persuasive on it.

25 He's a good lawyer. I know he's going to come up

1 and say something, but I know --

2 THE COURT: If he -- do you agree that if the
3 Court concludes that he has shown a substantial likelihood
4 of success on the merits, by your own argument if Stone --
5 if the money, if it's the OXB-1 wallet or the OX-50 wallet,
6 if that's all he's got, if it's gone, they can't collect?

7 MR. FREEDMAN: First of all, Judge, we just heard
8 them say that's not all he's got, and they said maybe there
9 are other assets.

10 THE COURT: They said they didn't know what he's
11 got.

12 MR. FREEDMAN: Right, so then how are they saying
13 that's all he's got? It's their burden. They got to prove
14 it. But more importantly, Judge, much more importantly,
15 even if this Court were to conclude that they have a
16 likelihood of success on the merits, okay, and I don't think
17 it should, but if it does they still have to show
18 irreparable harm. This is not a common law jurisdiction
19 from the United Kingdom. They need to show irreparable
20 harm. We don't give Mareva injunctions.

21 THE COURT: Yeah. I understand your argument on
22 that.

23 MR. FREEDMAN: And they can't do it, Judge. They
24 can't show irreparable harm.

25 THE COURT: I understand your argument on that

1 point.

2 MR. FREEDMAN: And the other point being, Judge,
3 it is unclear to me why there would be any prejudice to
4 anyone if the order that we offered to voluntarily enter
5 into would be entered where the assets would be frozen
6 within -- not frozen but rather confined within the OX-50
7 wallet and cannot leave that wallet absent court order, I
8 see no -- then there's zero risk of dissipation of assets.
9 And then Mr. Stone can continue to --

10 THE COURT: That's the only place where assets
11 are, you know?

12 MR. FREEDMAN: That's what it appears to be, and
13 that -- but I don't know. Based on the -- based on my
14 review of the evidence, that's the way I understand it,
15 although obviously some was expended. I know Mr. Stone
16 talked about that. I don't think those still exist, but I
17 don't really know.

18 But my point being, Judge, they haven't shown that
19 there are no other assets. And in fact, even if these are
20 the only assets, they haven't shown irreparable harm. And
21 to the extent the Court is at all concerned, we will
22 voluntarily enter into an order which makes it -- there's a
23 zero percent chance of dissipation of assets and that should
24 end this inquiry without further expenditure to the estate.

25 THE COURT: Okay, thank you. All right. When --

1 look, file a letter on the docket by 3:00 tomorrow with an
2 agreed schedule for submitting additional submissions from
3 each side, okay?

4 MR. FREEDMAN: Thank you, Your Honor.

5 THE COURT: But I want -- I want to make clear I'm
6 so ordering the record subject to any written order that
7 gets entered is there better not be -- you know, Mr.
8 Freedman, it's a disaster for your clients if I find out
9 later that money flowed out while I was deciding this
10 matter.

11 MR. FREEDMAN: Judge, I think it's crystal clear
12 on that. And my only comment on that, and I'm not my
13 client, Judge, but I will tell you on the record that we
14 will tell him not to move any assets out of those wallets.

15 My concern is Mr. Hurley is up here asking you for
16 this blanket injunction to stop all transfers of all assets,
17 and Mr. Stone has already talked about the fact that there
18 may have been commingling of funds at some point like 12
19 months ago. Does that mean Mr. Stone can't buy himself a
20 sandwich for lunch because the TRO will enjoin him from
21 expenditure of any assets?

22 And so, Judge, I will talk to Mr. Hurley. But my
23 point is you've got 3-and-a-half million or so of assets
24 within that OX-50 wallet. We've told you we have that NFT
25 and that \$100,000. Happy to include that subject to TRO.

1 Happy to enter into that.

2 Any broader than that and how's my client going to
3 live? Like, there's been no showing of other assets. So,
4 we will -- we will work it out with Mr. Hurley, Judge.

5 THE COURT: All right, we are adjourned for the
6 day. Thank you very much, everybody.

7 MR. HURLEY: Your Honor, I'm sorry. Can I just --
8 I need to respond to that briefly. I apologize, but we're
9 talking about a situation where we have to depend on the
10 person that's accused of this theft identifying the assets
11 in question, and I don't want to sit down after Mr. Freedman
12 just said that and have him say oh, you heard me just say
13 it's only those two wallets that matter.

14 THE COURT: Look. Insist on part of an agreement
15 that you have a declaration under oath from Mr. Stone that
16 that's -- those are the only assets, okay? And then if it
17 turns out that that wasn't true, we'll -- somebody will have
18 to deal with that after. We're adjourned.

19 MR. FREEDMAN: Judge, those are the only --

20 THE COURT: I think you can work this out.

21 MR. FREEDMAN: Judge, those are the only assets
22 that what, that he has to his name or that he believes trace
23 to Celsius? I --

24 THE COURT: Try and work this out. We're
25 adjourned.

1 MR. FREEDMAN: We'll try, Judge.
2 (Whereupon these proceedings were concluded.)
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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

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Date: January 16, 2023

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